

In The Matter Of:
United States vs.
PFC Bradley E. Manning

Vol. 28
August 5, 2013
UNOFFICIAL DRAFT - 8/5/13 Morning Session

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VOLUME XXVIII
IN THE UNITED STATES ARMY
UNITED STATES
VS.
MANNING, Bradley E., Pfc. COURT-MARTIAL
U.S. Army, xxx-xx-9504
Headquarters and Headquarters Company,
U.S. Army Garrison,
Joint Base Myer-Henderson Hall,
Fort Myer, VA 22211
_____ /

The Hearing in the above-titled matter was
held on Monday, August 5th, 2013, at 10:00 a.m., at
Fort Meade, Maryland, before the Honorable Colonel
Denise Lind, Judge.

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DISCLAIMER

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August 5th, 2013

WITNESS: Patrick Kennedy

Examination By:

Marked

Mr. Fein

11, 136

Mr. Coombs

62, 133

1 APPEARANCES :

2
3 ON BEHALF OF GOVERNMENT :

4 MAJOR ASHDEN FEIN

5 CAPTAIN JOSEPH MORROW

6 CAPTAIN ANGEL OVERGAARD

7 CAPTAIN HUNTER WHYTE

8 CAPTAIN ALEXANDER van ELLEN

9
10 ON BEHALF OF ACCUSED :

11 DAVID COOMBS

12 CAPTAIN JOSHUA TOOMAN

13 MAJOR THOMAS HURLEY

1 PROCEEDINGS,

2 THE CLERK: All rise.

3 THE COURT: Please be seated. The court is
4 called to order. Major Fein, please account for us?

5 MR. FEIN: Yes, ma'am. All parties in the
6 court last recess are again present with fine
7 exceptions. Captain Overgaard is present and
8 Mr. Chavez and the court reporter is present.
9 Mr. Robert Shaw is absent.

10 THE COURT: All right. Have there been any
11 new exhibits added to the Appellate exhibit list?

12 MR. FEIN: Yes, ma'am. Appellate
13 Exhibit 632, the Prosecution's response to the
14 Defense's motion to merge specifications 5 and 7 of
15 charge 2 dated 2 August, 2013. Exhibit 633 is
16 Prosecution response to Defense's motion to merge
17 specifications 4 and 6 of charge 2 dated 2 August, 2013
18 and Appellate Exhibit 634 is the Prosecution's response
19 to Defendant's motion to merge with an unreasonable
20 multiplication of charges for sentencing dated
21 2 August, 2013.

1 Also, Your Honor, as of 09:49 this morning,
2 there was ten members of the media in the operations
3 center, one stenographer. There's no media in the
4 court room and 19 spectators in the courtroom.
5 Currently, the overflow trailer is not being used but
6 is available if needed.

7 THE COURT: All right. Thank you. I also
8 received an E-mail from Defense counsel over the
9 weekend with respect to the unreasonable multiplication
10 of charges for findings motions.

11 I believe it was specifications 4 and 6 of
12 charge 2 that are at issue?

13 MR. COOMBS: That is correct, Your Honor.
14 After the 802 session, we spoke with government. I
15 believe what we'll do is put together a stipulation of
16 expected testimony and in order to highlight the issue
17 that the Defense believes was brought out in the
18 government's response motion.

19 THE COURT: All right. And does either
20 side desire oral argument with respect to that motion?

21 MR. COOMBS: I think once the -- yes, the

1 Defense would, Honor Honor.

2 THE COURT: All right. So we'll have to
3 have a time that we build that in. What I'd like to do
4 is get through the witnesses -- maybe get to the
5 witness today and this afternoon perhaps or, if that
6 doesn't work, maybe we can do it tomorrow. The court
7 will hold that ruling in advance pending oral argument.

8 MR. COOMBS: This afternoon will be fine
9 for the Defense, Your Honor.

10 THE COURT: All right. Government?

11 MR. FEIN: That would be fine, ma'am. We
12 can, at lunchtime, start working on the stip.

13 THE COURT: Once again, counsel, and I met
14 in a brief RCM 802 conference before we started today
15 to discuss logistics and other issues and arising cases
16 and I advised counsel that, in finalizing my ruling
17 with respect to the Defense motion for appropriate
18 relief under RCM 1001B4, but for the way ahead, I'm
19 going to read that portion of the ruling now because it
20 is germane as we proceed.

21 "Basically, conclusions of law procedures

1 forward. The court cannot determine if government
2 proffered evidence as admissible aggravation under RCM
3 1001B4 unless the court knows what the evidence is. If
4 this were a trial before members, the court would
5 address these issues by holding an Article 39 session
6 outside the presence of the members with each witness.

7 The court would hear the testimony,
8 argument from counsel and rule on what, if any, of the
9 testimony was admissible as aggravating evidence under
10 RCM 1001B4.

11 Since this case is a judge alone trial,
12 there are no Article 39A sessions during the trial.
13 The court sits in its interlocutory capacity to
14 evaluate what evidence should be introduced and in its
15 sentence imposing authority, when considering only
16 appropriately admitted evidence for its proper purpose.

17 2: The following procedure will be
18 followed for all remaining government witnesses for
19 whom the government intends to qualify as an expert.

20 A: The government will begin by
21 identifying the scope of the expertise for which the

1 government seeks to qualify the witness followed by the
2 ultimate opinion the government seeks from the expert.

3 B: Defense may object and voir dire the
4 witness after the government lays the foundation for
5 the witness.

6 C: The government may lay for the
7 foundation for the expert's opinion to include any
8 admissible evidence in accordance with MRA 703. The
9 government will not introduce any hearsay or other
10 facts or data that is not admissible evidence in
11 support of the expert opinion.

12 D: The Defense may object during the scope
13 of the witness's testimony and articulate the reasons
14 for the objection.

15 E: The court will listen to the evidence
16 in its interlocutory capacity. The court will
17 summarily rule on clearly inadmissible testimony.
18 After the witness has testified, the Defense will
19 identify for the court the areas of the testimony the
20 Defense finds objectionable and why. There may be a
21 need for a classified supplement.

1 F: The government will provide its
2 position to the court regarding each Defense objection.

3 G: The court will examine the testimony
4 and rule on each objection lodged by the Defense. When
5 acting in its sentencing imposing rule, the court will
6 not consider any testimony or evidence ruled to be
7 inadmissible aggravation evidence.

8 H: Unless either party wishes to rely on
9 additional legal authority not briefed in the filings
10 for this motion, the list and response need state only
11 the objections and the reason the testimony or evidence
12 should or not should be admitted."

13 Does either side have any question about
14 that procedure?

15 MR. COOMBS: No, Your Honor.

16 MR. FEIN: No, ma'am.

17 THE COURT: Is there anything else we need
18 to address before we call the witness?

19 MR. FEIN: No, ma'am. Ma'am, the United
20 States calls Under Secretary of State For Management,
21 Patrick Kennedy.

1 Please take the stand and face me.

2 Whereupon,

3 PATRICK KENNEDY,

4 called as a witness, having been first duly sworn to tell

5 the truth, the whole truth, and nothing but the truth,

6 was examined and testified as follows:

7 EXAMINATION BY MR. FEIN:

8 Q Thank you, sir. Please be seated.

9 A (Witness complied.)

10 Q Sir, you are the Under Secretary of State

11 For Management, Patrick Kennedy?

12 A Yes, sir.

13 Q And, sir, what does your current position

14 entail as the Under Secretary of management?

15 A I am responsible for the operational aspect

16 of the State Department, telecommunications,

17 information technology, records, finance, budget,

18 security, medical, personnel and logistics.

19 Q And, sir, how long have you been in the

20 current position -- in your current position?

21 A I've been in the position since November of

1 2007.

2 Q And, sir, you are here today to discuss
3 your expertise in the management and operations of the
4 Department of State?

5 A Correct, Major.

6 Q And, sir, you are also here to discuss your
7 expertise in the use of diplomatic reporting by U.S.
8 policy makers?

9 A Correct.

10 Q Sir, given that expertise, are you also
11 here today to give your opinion on the impact of PFC
12 Manning's criminal conduct on the management and
13 operations of the Department of State?

14 A Correct.

15 Q And also the impact of Private First Class
16 Manning's criminal conduct on the diplomatic reporting
17 use by U.S. policymakers?

18 A Correct.

19 Q Thank you, sir.

20 Sir, before we continue, if either party or
21 the court asks you a question that requires a

1 classified answer, please notify the court. There's no
2 expectation here in this court-martial that that
3 classified information be discussed in the open.

4 A Thank you.

5 Q Sir, how does one become the Under
6 Secretary of State For Management?

7 A That is a presidential appointment. I have
8 been a foreign service officer for 40 years and I was
9 probably at the point -- in 2007, I think, I was the
10 senior career management officer in the State
11 Department and I was recommended to the then Secretary
12 of State, Secretary Rice, by the then deputy Secretary
13 of State John Negroponte.

14 Q Sir, where does your current position fall
15 within, for instance, an organizational chart within
16 the Department of State?

17 A You have the Secretary of State, you have
18 two deputy Secretaries of State and then you have six
19 under Secretaries of State. So it's, in effect, the
20 third operational tier in the State Department.

21 Q Sir, are you a member of the Senior Foreign

1 Service?

2 A I am.

3 Q And how many years have you been a member
4 of the Foreign Service?

5 A I've been a member of the Foreign Service
6 since 1973. So a little over 40 years.

7 Q And what is your rank, sir, in the Foreign
8 Service?

9 A The rank is called career minister. It is
10 the equivalent of the Senior Executive Service and in
11 military parlance it would be the protocol equivalent
12 of a three-star general.

13 Q Sir, in your current position, do you have
14 any specific delegations as it pertains to executive
15 order 13526 and its preceding orders?

16 A I am the responsible official for
17 classification for the department.

18 Q And where does that authority -- your
19 specific as the senior agency official derive from?

20 A It derives from a delegation of authority
21 from the Secretary of State.

1 Q Sir, does that include having essentially,
2 as we would call it, commanding control over the
3 different information systems and information
4 management systems?

5 A Yes.

6 Q That also involves classified information,
7 sir?

8 A Yes.

9 MR. FEIN: Your Honor, before going through
10 Under Secretary of State Kennedy's entire background,
11 the United States offers Under Secretary of State For
12 Management Patrick Kennedy as an expert in the field of
13 management and operations in the Department of State
14 and expert in the use of diplomatic reporting by U.S.
15 policymakers.

16 MR. COOMBS: No objection, Your Honor.

17 THE COURT: Okay.

18 MR. FEIN: One moment, please.

19 THE COURT: Does that truncate the
20 foundation?

21 MR. FEIN: It will be truncated, ma'am.

1 BY MR. FEIN:

2 Q Sir, rather than going through your almost
3 41 years of experience in the Department of State, I'd
4 like to ask you a few questions about key jobs you've
5 held at the department.

6 Sir, when did you first become -- when did
7 you first assume a job within the assistant secretary
8 or the secretary's office level?

9 A I was a -- became the Assistant Secretary
10 of State For Administration in 1993 and served in that
11 position until 2001.

12 Q And what were your general
13 responsibilities, sir, as the Assistant Secretary of
14 State For Administration?

15 A It included oversight of information
16 technology, classifications and records management,
17 oversees buildings operations, logistics.

18 Q And, sir, after being the Assistant
19 Secretary of State For Administration, what position
20 did you hold?

21 A I then became one of the U.S.

1 representatives to the United Nations and served in
2 that position from 2001 to 2005.

3 Q And during that time, sir, did you overseas
4 details or other duties?

5 A Twice. Once in 2003 and once in 2004 for
6 six and a half months and three and a half months
7 respectively I was detailed to Iraq first as the chief
8 of staff for the Coalitional Provisional Authority and
9 the then second time in 2004 as the chief of staff for
10 the transition unit, the transition from CPA and
11 Defense to an American embassy.

12 Q Sir, have you ever been detailed as a
13 Department of State senior foreign service officer to
14 the Office of Director of National Intelligence?

15 A Yes.

16 Q In what capacity, sir?

17 A From 2005 to 2007, I was the deputy
18 director of National Intelligence For Management.

19 Q And why, sir, ultimately, were you selected
20 for that job at ODNI?

21 A Because I was a senior management officer

1 and because the to-be-named first director of national
2 intelligence, John Negroponte, had been my supervisor
3 both at the United Nations -- U.S. missions with United
4 Nations and in Iraq.

5 THE COURT: I'm sorry, what was the year
6 that that occurred?

7 THE WITNESS: 2005 to 2007.

8 THE COURT: Thank you.

9 BY MR. FEIN:

10 Q Sir, can you generally describe to the
11 court your responsibilities as a deputy director of
12 National Intelligence For Management?

13 A I essentially had two responsibilities, the
14 office of the Director of National Intelligence was
15 set -- was just being set up. So someone had to set up
16 the personnel system, the financial systems, the IT and
17 bring in the positions that the Intelligence Reform and
18 Terrorism Prevention Act required to be merged into the
19 Office of the Director of National Intelligence and
20 then set up processes and make sure that the office was
21 established and running and then, additionally, oversee

1 the logistics, the finance, the information management,
2 the personnel systems of the ODNI.

3 Q Sir, after May of 2007, what job did you
4 move back when you returned to the department?

5 A When I returned to the department, I was
6 briefly the director of Management Policy Rightsizing
7 and Innovation for the department for several months
8 until I was nominated to be Under Secretary of State
9 For Management.

10 Q And what were your general
11 responsibilities, sir, within the office of Management
12 Policy, Rightsizing and Innovation?

13 A The office is essentially a senior level
14 staff arm, a mini think tank that oversees the
15 development of management policies, works with other
16 U.S. Government agencies on the correct numbers and
17 staffing of American embassies' consulates and other
18 offices throughout the world and then heads a unit that
19 works within the department to look for innovative ways
20 to improve all aspects of management and operations.

21 Q Thank you, sir.

1 Sir, have you ever taught in the field of
2 management and operations of the department?

3 A Not formally. The State Department has the
4 national foreign affairs training center, the Foreign
5 Service Institute, and I have been an adjunct faculty
6 there which simply means you give lectures on subject
7 matter. Mine was on logistics and that was back in the
8 1990s and I give lectures there on a regular basis to
9 either in-service or newly appointment classes.

10 Q Sir, the ones -- the lecture you give today
11 and in recent time, what was the general subject areas?

12 A The general subject is the overall
13 management and operations of the State Department.

14 Q Sir, have you also or have you testified in
15 the Field of Information Management within the
16 Department of State?

17 A Yes, both when I was assistant Secretary of
18 State for administration and now in my position as
19 Under Secretary For Management I testify regularly
20 before the Congress in either formal sessions in open
21 and closed briefings and among the subjects that I

1 cover, since it is within my responsibility, is
2 information management.

3 Q Sir, using the term information management,
4 what does that mean, sir?

5 A Information management has really several
6 parts to it. It is the management of the information
7 itself, which is the records management, the
8 classifications of it and then also computer systems
9 operations and, lastly, long haul technology.

10 Q Sir, have you ever had personal experience
11 in your career with information management operations?

12 A As a management officer both in Africa when
13 I served there in the 1970s and in Cairo where I was
14 chief of administration, chief of management at the
15 American embassy in Cairo, the information management
16 section within the embassy reported directly to me.

17 Q Sir, can you please describe for the
18 court -- you've used the term, I think, reporting --
19 what reporting means?

20 A It is the State Department's -- one of the
21 State Department's major responsibilities in the

1 national security arena is to have officers who are
2 expert in political reporting, economic reporting,
3 public diplomacy as well as counselor and
4 administration assigned to American embassies,
5 consulates and other missions around the world whose
6 duties are to engage with foreign government officials
7 and foreign non-officials, NGOs, business community,
8 et cetera and to prepare reports and then append
9 analysis to them to advise Washington on trends,
10 circumstances and events in foreign nations so that
11 information can then serve Washington policymakers in
12 developing the best strategy for national security.

13 Q Sir, have you, in your career, been a
14 consumer State Department Reporting?

15 A I have been ever since I was in -- I would
16 say I was in a supervisory position which was probably
17 starting in 1985 when I became the executive director
18 and then deputy executive secretary in the Department
19 of Secretary which is the office that directly supports
20 the Secretary of State.

21 Q Sir, during your career, have you also had

1 experience how U.S. government policymakers used
2 Department of State reporting?

3 A Absolutely, both as a senior management
4 official I see that the actions that department
5 officials take on a worldwide basis across a full range
6 of issues is impacted heavily by the reporting and
7 analysis that is provided them -- the information that
8 is provided them by our offices in the field and also
9 by our personnel in Washington who engage with foreign
10 delegations, with foreign embassies and others as well.

11 Q Sir, can you briefly describe for the court
12 the different types of positions you've held where
13 you've experienced U.S. policymakers use Department of
14 State reporting?

15 A Certainly. In my current position as Under
16 Secretary For State For Management, it is my
17 responsibility to determine where the resources of the
18 State Department -- the financial and human resources
19 are going to be applied, where we might need to
20 construct new facilities, where new posts might be
21 open, what security steps may or may not have to be

1 taken to protect our personnel, where the economic
2 trends may be going overseas which would impact foreign
3 exchange rates. It would have an impact on how the
4 budget office of the State Department prepares its
5 budget or how our financial operations work and, in all
6 of those activities, the reporting and analysis
7 submitted by our posts overseas inform us of where we
8 may need to increase resources, where we might need to
9 reduce resources, how we budget and how we protect.

10 Q Sir, have you ever been required or have
11 you ever represented Department of State on official
12 matters within the U.S. Government?

13 A Yes. I regularly engage in inter-agencies'
14 activities up and to representing the State Department
15 on the deputy's committee of the national security
16 staff.

17 Q Sir, now I'd like to focus this next
18 portion of your testimony on the actual -- on the
19 department's first response to the WikiLeaks
20 disclosures.

21 Sir, do compromises in classified State

1 Department information, does that fall within your
2 scope of responsibility?

3 A It does.

4 Q And were you made aware, sir, of the
5 compromise of the Reykjavik cable in back in March of
6 2010?

7 A I was.

8 Q And did the department take any actions,
9 investigate or response to the compromise of that
10 reported cable?

11 A Our diplomatic security service, which is
12 the security arm of the State Department, worked with
13 other elements of the United States government to
14 determine what the source of that leak might have been.

15 Q Sir, in the summer of 2010 when the
16 Department of Defense information started to publicly
17 released, did you take any steps within the Department
18 of State in response to that disclosure?

19 A Yes. We had a liaison officer assigned to
20 the task force that was under the direction of
21 Brigadier General Carr. We also assembled a database

1 that was posted to the State Department's Intranet
2 classified website of all of the cables we thought
3 might be incorporated in such a leak and then we
4 advised our embassy's counselors and other posts around
5 the world to go to this Intranet website and to review
6 the cables that they had written because it was
7 organized by source and also advised the departmental
8 bureaus, the departmental operating units that would
9 also have been the sources of cables outbound from the
10 State Department to review material that they would
11 have generated.

12 Q So, sir, you mentioned Department of State
13 cables. We'll get to that in a moment, but going back
14 to the Department of Defense information, why did the
15 State Department dedicate any resources to the original
16 DOD effort with the DOD information?

17 A Because there was reason to believe that
18 summary material from State Department diplomatic
19 reporting and analysis cables was incorporated into
20 some of the DOD material.

21 Q Hold on, please, sir.

1 (Pause.)

2 Sir, what point in the summer of 2010 did
3 you become the senior State Department official for all
4 matters of WikiLeaks?

5 A After briefing the Secretary of State and
6 my senior colleagues on the information that we were
7 receiving, I was designated to lead the departmental
8 efforts in this regard.

9 Q And why, sir -- prior to the Thanksgiving
10 timeframe, why was it necessary to be briefing even the
11 secretary on the ongoing Department of Defense
12 compromises of information?

13 A Because there was, I said, reason to
14 believe and then evidence that certain State Department
15 materials, certain summaries of State Department
16 reporting and analysis was contained in the -- in that
17 Department of Defense material and then simply in order
18 to get prepared should other State Department material
19 be at risk.

20 Q So, sir, in the time between summer of 2010
21 and before Thanksgiving of 2010, were you aware of any

1 additional Department of State classified information
2 that could have potentially been compromised to
3 WikiLeaks?

4 A There was -- we were provided with
5 information from the Department of Defense that
6 indicated that their review of material indicated that
7 there could be a large quantity of State Department
8 material, potentially up to 250,000 reporting cables.

9 Q Sir, at that point, the time between summer
10 of 2010 and before Thanksgiving of 2010, what steps did
11 you take for the department in respect to the purported
12 NCD cable compromise?

13 A What we did was assemble a file, a
14 searchable file on the State Department's classified
15 Intranet, our internal classified system and then
16 advised all ambassadors and deputy chiefs of mission,
17 our number two officer at an embassy, to -- of the
18 location of this file, so to speak, on our website and
19 ask them to acquaint themselves with this material and
20 to read through it and be prepared to analyze what the
21 potentially deleterious impacts were and, at the same

1 time, addressing the same instruction to all assistant
2 secretaries and office directors within the State
3 Department whose bureaus or offices might also be
4 generating the outgoing material that was contained --
5 that had generated the outgoing material that was in
6 that file.

7 Q So, sir, why, at this time, prior to
8 Thanksgiving of 2010 was, the direction simply to
9 acquaint themselves with the purported cables?

10 A I think there were two reasons. The first
11 is that the State Department is a rather small
12 organization with over 280 posts around the world, wide
13 responsibilities and to divert resources, additional
14 resources, large resources to any further review when
15 it was not yet absolutely clear that those -- that the
16 State Department material was going to be released
17 would have been a version waste of very, very scarce
18 human and other resources and, secondly, obviously we
19 would not wish to engage with any of the other nations
20 involved in advance. It would have been premature to
21 engage with another nation about what might or might

1 not be contained in a leak or a purported leak without
2 being absolutely sure. That would have been premature,
3 if not stupid.

4 Q So, sir, what actions did the department
5 take around Thanksgiving of 2010 upon learning that the
6 public release of the purported cables was imminent?

7 A The department notified all posts of this
8 and asked them to reacquaint themselves with all of
9 this material, to carefully analyze what might be
10 leaked or become a purported leak and then to prepare
11 guidance for Washington on potential host
12 government/host nation reaction to that material.

13 Q Sir, did you, as the Under Secretary, have
14 to brief the Secretary of State?

15 A Yes, I did.

16 Q And why, sir?

17 A Because, obviously, this is a huge -- it's
18 a huge effort because State Department reporting and
19 analysis is incredibly important to the national
20 security and also our reporting and analysis is based,
21 to a great extent, on our ability to interface, to work

1 with foreign government officials and other foreign
2 nationals in the private sector of all kinds.

3 They have an implicit belief that there's a
4 confidentiality and a privacy with what they would say
5 to us and the breach of that privacy would have a
6 significant and deleterious impact on our operations
7 and, secondly, also, just perchance, the Secretary of
8 State was about to embark on an overseas travel to two
9 major conferences where she would be seeing many, many
10 senior foreign leaders.

11 Q So, sir, could you please very briefly
12 describe your specific role around that Thanksgiving
13 timeframe with the -- as the purported cables were
14 being released to the public?

15 A Certainly. I worked with the executive
16 secretary of the department. The executive secretary,
17 using almost a Thomas Jeffersonian term, is the chief
18 clerk of the department, the individual who coordinates
19 process and operations of paper flow and briefing
20 materials within the department and the department, as
21 a matter of course, when it is faced with a serious

1 crisis, sets up a task force.

2 We set up a task force. We set up a task
3 force to review and deal with material, we set up a
4 mitigation task force and we set up a "persons at risk"
5 task force.

6 So my responsibility was to make sure,
7 working with the executive secretary, that those
8 processes were started and that they had the resources
9 necessary that we had to pull from throughout the
10 department to staff them because the department has no
11 excess -- in fact, has no reserve or National Guard to
12 call forward and call up in order to backstop the State
13 Department. It has to pull people, in effect, "off the
14 line" to deal with any crisis.

15 Q Sir, first, we'd like to talk about the
16 WikiLeaks working group. For today's testimony, sir, I
17 will not be trying -- I will not be listening to any
18 testimony from you about the mitigation team, just the
19 WikiLeaks working group.

20 So, sir, in reference to the WikiLeaks
21 working group, when was that first created?

1 A The WikiLeaks working group was created
2 around that Thanksgiving timeframe. I don't have the
3 exact date in my head. It was composed of
4 representatives at a senior level, the deputy assistant
5 secretary level from every regional bureau, the Bureau
6 of International Organization Affairs and all the
7 functional bureaus.

8 A functional bureau in the State Department
9 would be the Bureau of Economic and Business Affairs,
10 the Bureau of Oceans, Environmental and Science
11 Affairs, the Counter-terrorism Office as well as
12 individuals from various management bureaus who are
13 there in a supporting and advisory role and its job was
14 to serve as a central hub.

15 We have a small suite behind our operations
16 center, our 24-hour command center, the equivalent of
17 the National Military Command Center in which task
18 forces assemble when we're in crisis mode. People sit
19 around the table and, as information comes in from
20 other elements of the department or from overseas, they
21 make sure the information is coalesced, assembled,

1 compared, contrasted and then briefed to senior to
2 management along with recommendations for "next steps"
3 that might have to be taken.

4 Q Sir, you mentioned the term crisis a few
5 times.

6 What is a crisis situation in terms of the
7 Department of State?

8 A The crisis situation of the Department of
9 State can -- is a huge range of activities. You can
10 have an airplane crash with many American citizens
11 onboard. You can have a natural disaster, the Haiti
12 earthquake. You can have something like the tsunami in
13 Japan followed by the damage to the Aku Shima power
14 plants, you can have a terrorist attack on the United
15 States embassy or you can have any activity that has a
16 deleterious impact on the State Department's operations
17 our national security division which goes outside of
18 the narrow framework that one bureau or office should
19 and could handle itself. So a crisis -- a crisis task
20 force is that.

21 Q Sir, why was this situation considered a

1 crisis?

2 A It was considered a crisis because the
3 release of documents that would be purported to be U.S.
4 State Department classified or unclassified, for that
5 matter, in large quantities reporting an analysis would
6 breach the trust and confidence of our interlocutors
7 overseas.

8 When the State Department officers go out
9 and are looking at the situation in the country in
10 which they are assigned or the international
11 organization to which they are assigned, they are
12 looking at activities that are ongoing. They are
13 talking to other diplomats, to members of the private
14 sector, wherever, and they are assembling reporting on
15 that situation and then there are pending analysis to
16 it.

17 Part and an incredibly important part of
18 that complex undertaking is to understand the opinions,
19 the analysis, the feelings of others, i.e. those
20 outside the State Department or the U.S. Government
21 family and, therefore, we will have discussions with

1 host nation, meaning the country in which the embassy
2 is located, diplomats from third countries, individuals
3 representing non-governmental organizations.

4 We have full and frank discussions with
5 those individuals and it is their expectation that
6 those discussions will be treated as private and
7 confidential and not exposed to everyone because, if
8 that was the case, they would be reticent to provide
9 their full and frank opinions and analysis and share
10 them with us and then, as we're assembling our
11 reporting analysis, feeding it back to Washington where
12 it becomes one piece of a very large puzzle that is the
13 national security of the United States, the diminution
14 of the value of that reporting is that we're not
15 getting the full and frank opinions of interlocutors
16 expressed to us.

17 Q So, sir, in reference --

18 THE COURT: Hold on just a moment. Yes?

19 MR. COOMBS: I'm sorry to interrupt you
20 there. The last part of -- Under Secretary Kennedy's
21 answer would be [inaudible]...

1 THE COURT: What time frame are you talking
2 about with the diminution?

3 THE WITNESS: I'm talking about --

4 THE COURT: Hold on.

5 MR. COOMBS: The last part, Under
6 Secretary's answer would be 2001.

7 THE COURT: What timeframe are you talking
8 about?

9 THE WITNESS: I'm sorry?

10 THE COURT: I understand. I got the
11 objection down.

12 What timeframe where you talking about with
13 the diminution?

14 THE WITNESS: I'm talking about the
15 diminution after any leak of classified information,
16 any leak of classified information that can be
17 attributed to a breach of confidence results in a
18 diminution.

19 THE COURT: Thank you.

20 BY MR. FEIN:

21 Q You gave that answer based on the answer

1 why this was thought to be a crisis.

2 In your experience, sir, how many bureaus
3 are normally represented in a crisis work group?

4 A I would say usually in a crisis working
5 group you have a single geographic bureau because most
6 events take place in one geographic area and then you
7 have the Bureau of Public Affairs because they are
8 large press inquiries. You have the Bureau of
9 Consulate Affairs which handles our assistants to
10 American citizens in distress.

11 Overseas, you would -- could have the
12 Bureau of Diplomatic Security. You have the Bureau of
13 Administration which would be providing logistics and
14 then you could have, potentially, the Bureau of Human
15 Resources if there are large number of State Department
16 people. I would say five or six.

17 Q So how was the WikiLeaks working group
18 different than other crisis working groups?

19 A It was different in that it impacted every
20 single one of our six regional bureaus plus the Bureau
21 of International Organizational Affairs, plus a

1 significant number of functional bureaus, economic and
2 business, ocean, environment, science,
3 counter-terrorism.

4 Q In your 40 years, have you ever seen a
5 crisis working group that encompassed so many bureaus?

6 A Never.

7 Q Why not, sir?

8 A Because we've never had a crisis that was
9 so -- it's so wide ranging that affected that many
10 bureaus at one time.

11 Q Can you please describe to the court the
12 overall mission of WikiLeaks working group within the
13 first 24 to 48 hours?

14 A The mission of WikiLeaks working group was
15 to be in communication with the ambassador and chief of
16 mission at our overseas post and with the assistant
17 secretaries, deputies, assistant secretaries and office
18 directors within the domestic offices to review the
19 material that we believed could become compromised in
20 such release and determine what recommendations we need
21 to make to the secretary and what action the State

1 Department needed to take should that information
2 result in a purported leak of State Department
3 documents.

4 Q Was anyone at the State Department looking
5 at the documents that were being released in the press?

6 A Yes.

7 Q Can you describe that process?

8 A The documents were being -- we were looking
9 at the purported leaked documents in the press and then
10 determining what actions we needed to take in light of
11 engaging with foreign officials, either governmental or
12 private either in Washington or overseas.

13 Q One moment, please, sir.

14 (Pause.)

15 Sir, how many countries does the United
16 States have diplomatic relations with, approximately?

17 A I think we have a diplomatic relations with
18 170 countries.

19 Q Do we have embassies and posts in all of
20 them?

21 A We have embassies in about 160 of them.

1 There are some small, smaller nations, in the
2 geographic sense, in mainly the island nations in the
3 Caribbean and in the Pacific where we have diplomatic
4 relations and our diplomacy carried out by an
5 ambassador resident in another country also accredited,
6 also the United States ambassador of those actions as
7 well.

8 Q How many geographic bureaus?

9 A There are six geographic bureaus.

10 Q How many functional bureaus?

11 A About two dozen.

12 Q Total, sir, how many of these embassies or
13 the bureaus were involved in responding to the crisis?

14 A Every regional bureau plus the Bureau of
15 International Organizational Affairs plus probably 20
16 others.

17 Q What about the embassies abroad?

18 A Every single embassy and our consulates as
19 well. Any and all of those offices could have done
20 some element of political, economic reporting and
21 analysis. So one of these would have been involved if

1 they had filed reporting cables and also all of them do
2 to some degree or another.

3 Q Sir, who -- speaking about the embassies,
4 who at the embassies were involved in reviewing these
5 documents and getting back to main state?

6 A I would say everyone at the embassy. The
7 ambassador, the deputy chief of admission would be
8 leading the team. You have political reporting, you
9 have economic reporting, science reporting. You could
10 have political military affairs reporting. You could
11 have press and cultural reporting. You could have
12 consulate reporting. You could have administrative and
13 security reporting.

14 So every officer at that embassy or other
15 post would have been reviewing that database I
16 mentioned earlier which we had set up.

17 Q So, sir, I'm sorry. When you said
18 everyone, you mean all the reporting officers, not
19 literally everyone at an embassy?

20 A I would think also it would involve the
21 counselor officers would be looking at it. There would

1 be also the management officer and the security officer
2 would be looking at to see if any of that reporting,
3 should it be compromised, would have some kind of
4 potentially deleterious effect on either the security
5 or the operation.

6 So, yes, the reporting officers and
7 ambassador and the deputy chief submission are the
8 first line, but everyone else there is supporting them.

9 Q It is your understanding that each post,
10 you already essentially testified, ranges in some
11 sizes, some have ambassadors, some don't.

12 How many total people overseas were
13 involved in the initial response to the disclosures
14 approximately, sir, overseas?

15 A I would say the number is in the thousands.
16 We have about 10,000 American State Department
17 personnel abroad and I would say a significant number
18 of them would have been involved in this one way or
19 another.

20 Q Sir, how many -- on average, how many
21 individuals are assigned to geographic bureaus?

1 A They geographically vary in size, but I
2 would say that there are several hundred in each of the
3 six geographic bureaus, plus another 150 of the Bureau
4 of International Organization Affairs.

5 Q In your estimate, what was the total number
6 of individuals assigned to geographic bureaus that were
7 dedicated to supporting the WikiLeaks working group in
8 the first few weeks after the disclosure started?

9 A I would say that if you had a bureau it
10 would probably have been 75 or 80 percent of the
11 individuals only excluding those people responsible for
12 the internal administrative processing of the bureau
13 because if you have a large desk -- a desk is a
14 concept, not a physical thing, a desk, the French desk,
15 the Brazilian desk. If that desk has more than one
16 officer on it that's because there's a large amount of
17 material moving back and forth and, therefore, everyone
18 had been involved. If you had a very small country
19 there might be one officer who is handling two
20 countries. But all of them would have been involved
21 reviewing that potentially leaked material and then

1 determining what actions needed to be briefed out and
2 what actions might have to be taken bilaterally,
3 multi-laterally.

4 Q What about the function of bureaus? How
5 many people, on average, are assigned to those?

6 A Again, probably 200.

7 Q In your estimate, sir, what was the total
8 number of individuals assigned to functional bureaus
9 that were consumed by the first few weeks of WikiLeaks
10 working group?

11 A I would say of the 200, I'm guessing
12 probably more like half because they are responsible,
13 though equally important would probably have been less
14 directly although some, such as the economic and
15 business bureau or the counter-terrorism bureau, might
16 have been up in the 75 to 80 percent range as well.

17 Q Sir, what about the Under Secretary level?
18 How many Under Secretaries were involved?

19 A All six Under Secretaries were involved.

20 Q What about the Secretary of State? Was she
21 presently involved in the responses?

1 A She was.

2 Q And why did Secretary Clinton have to be
3 personally involved in this crisis management?

4 A Because the Secretary of State is
5 responsible for the operations of the entire State
6 Department and this was a very, very serious crisis.

7 Secondly, it is the Secretary of State who
8 is either on the telephone with or engaged in meeting
9 or in travels with a huge panoply of senior foreign
10 officials as well as both governmental and
11 non-governmental. So these are individuals -- the
12 individuals she would be dealing with if they would be
13 reading the newspaper.

14 Q Sir, why did you wait essentially at the
15 department until the release was eminent to start
16 implementing a department-wide response?

17 A I think there are two reasons for that.
18 First of all is that the department is always resourced
19 constrained. We put our resources to the immediate
20 activities and the -- as well as long-term planning
21 that best supports our national security mission and we

1 took, I believe, prudent preliminary steps such as
2 assembling that Intranet database and advising our
3 posts overseas as well as in our office in Washington
4 to prepare themselves by reviewing the material, but to
5 pull resources off the line to engage in this when we
6 were not absolutely fully sure that the material would
7 be released. It would be a potential waste of resource
8 and the second item is that if we're going to have to
9 deal with a country that is aggrieved about material
10 that they had read, you want to make sure that they had
11 read it before you went to them. Otherwise, you would
12 be ahead of the curve and this is one case where you do
13 not want to be ahead of the curve.

14 Q Did you direct an impact review to capture
15 the department's efforts that impacts from the
16 compromise of the purported cables?

17 A I did.

18 Q And when did you finalize that impact
19 review, sir?

20 A I did not finalize that impact.

21 Q Why did you not, sir?

1 A I received a draft, the draft that came to
2 me as a senior official in August of 2011 and as we
3 were reviewing it, we also very shortly thereafter
4 became aware that there was going to be a second major
5 traunch of purported documents moving into the press
6 and it became evident from looking at that and looking
7 at the material that what I had in my hand was a
8 snapshot based upon earlier material which was
9 certainly not comprehensive. When you took the
10 material that was published, purported State Department
11 documents and then added to it the second major traunch
12 that was about to be released which in that second
13 traunch was purported to contain a large number --
14 larger percentage of classified material than the first
15 traunch and, therefore, what I had was a snapshot in
16 time and certainly by no means represented a full and
17 conclusive damage assessment.

18 Q Sir, would a completed assessment have
19 mitigated any potential damage?

20 A No.

21 Q Why not, sir?

1 A Because assessment is simply measuring
2 damage. It does not mitigate damage.

3 Q Sir, from what you observed in your
4 position, the Under Secretary of State For Management,
5 has the department's ability to conduct diplomacy been
6 impacted by the PFC Manning's actions?

7 A Yes.

8 Q Has that also impacted foreign relations?

9 A Yes.

10 Q Sir, why is the ability to conduct
11 diplomacy in the United States' national interests?

12 A I believe that there is a three-legged
13 stool that protects U.S. national security. There's
14 obviously our military, our development assistance
15 which helps countries develop so that they do not
16 become ungovernable states and potential havens for
17 terrorism and the humanitarian point which is equally
18 of value of helping people desecrated and the third leg
19 of that stool is diplomacy and to do -- to underpin the
20 national security you need a robust State Department
21 diplomatic effort which includes the ability to report

1 and analyze events that are going on across the world
2 so that will become a piece of the puzzle, i.e.,
3 information that's available to national security
4 decision makers in Washington and we are -- if we are
5 not able to engage in full and frank and private and
6 confidential discussions with a full range of foreign
7 interlocutors, we are not able to craft up the
8 reporting and analysis to feed to those national
9 security decision makers in Washington information of a
10 quality that is diminished otherwise.

11 MR. COOMBS: The last part 1001B4, Your
12 Honor.

13 THE COURT: All right. Got it.

14 BY MR. FEIN:

15 Q Specifically in reference to the privacy
16 and confidence in the trust of our foreign
17 interlocutors have to have -- don't the -- well, do the
18 foreign interlocutors still have to work with us even
19 if they didn't have trust in us?

20 A Obviously, they have to work with us. When
21 we go into a foreign embassy to deliver a demarche, a

1 request that the United States is making them to engage
2 in some kind of action or support for the United States
3 and some world forum, they will certainly receive our
4 demarche and potentially work with us if this is in
5 their national interest and many cases it would be in
6 their -- in our common interest to do so. But what we
7 would be lacking is a full and frank exchange of views
8 on what their thinking is, what their analysis is of a
9 situation that is developed. It's that exchange,
10 that's correct. That full and frank exchange that
11 allows us to craft the best analytic to Washington on
12 circumstances.

13 Q You describe the conversation and report
14 back to Washington?

15 A Yes. We have a system and it has -- it's
16 one of those sort of historical names. There are names
17 called cables, they're sometimes called telegrams.
18 They're called cable telegrams and you see that often
19 referred to. What happens is we have offices stationed
20 at our posts around the world in economic reporting and
21 analysis, culture and science, political military,

1 et cetera, even the managerial report and analysis that
2 officers at our embassies monitor situations that are
3 ongoing in the nation to which they are assigned and
4 for potentially adjacent nations as well. As I they
5 are looking at that, analyze it in the context of their
6 own expertise, these individuals who have been trained
7 in the language and the culture of that country and
8 they rise in the ranks from probably subsequent and
9 repetitive tours in a country or region, these are our
10 subject matter experts. But that's not enough. What
11 they do then is they go out and they meet and they talk
12 with representatives of that government, of other
13 governments who happened to be based in that situation,
14 location of journalists educators, non-governmental
15 organizations, the best community. They meet and
16 discuss issues with all of those people engage in the
17 full range discussions and then go back to the embassy
18 and craft a cable, a telegram, a report that says, in
19 effect, here is what is going on and then they report
20 on the why and then depending upon the circumstances,
21 predictions, so to speak, about what actions might be

1 taken in the future by that nation and then that report
2 analysis feeds into the national security analysis in
3 Washington.

4 Q Sir, how do you, as the Under Secretary For
5 Management oversee this process?

6 A I provide the physical plan overseas. I
7 provide the personnel, security, the medical, the
8 logistics and I also provide the records management in
9 Washington and I provide the information technology
10 transmission to speak between the posts and Washington.

11 So those reports do reach Washington and
12 other U.S. government agencies and also an embassy
13 could also be reporting what we call laterally. The
14 army in Shangri-Law does not send reports to
15 Washington, but is sending the report to the embassy in
16 Shangri-La which is a country which might have some
17 interest in this meeting. Our embassy in that country
18 has interest in that reporting.

19 Q Why does the department write cables and/or
20 telegrams?

21 A To inform the policymakers in Washington so

1 that they can develop the best national security
2 position for the United States.

3 Q Sir, who with the U.S. Government reads
4 these cables?

5 A The State Department reporting analysis
6 goes to -- I think probably any U.S. Government agency
7 that has an interest in international affairs or has an
8 interest in domestic affairs that is impacted by
9 activities that go on overseas.

10 Q Sir, how many cables, on average, is sent
11 from any given embassy on any given day?

12 A It can range from a half dozen at the same
13 embassies to 100 or more in a large embassy.

14 Q Prior to PFC Manning, was information about
15 sources included in sources?

16 A Yes. Also, always is cited our
17 interlocutory. I would not refer to them as sources.
18 Sources has another context, but we refer to them just
19 as the people we meet with.

20 Q Sir, what purpose is it -- what purpose is
21 served when you list individuals, the people that

1 diplomats meet with in general, sir?

2 A It's a very important element in giving
3 context and credibility to the reporting information
4 and report from a more senior government official
5 might, in given circumstances, carry more weight than a
6 report from a junior official, report of a discussion
7 with a senior member of a significant party in a
8 country. It conveys a certain context to Washington
9 from a senior management of the business community and
10 it would be very, very important potentially to our
11 expert import bank on the overseas private investment
12 corporation in determining their strategies to promote
13 United States economic investments, our U.S. exports.

14 Q Sir, the information of Department of State
15 reports on U.S. Government policy?

16 A Yes. Policymakers in Washington do not
17 operate in a vacuum. There are obviously views from
18 multiple government agencies. The State Department has
19 views. The Defense Department has views. The
20 Department of Commerce might have views. All U.S.
21 Government agencies tend to have views on overseas that

1 impact on the United States national security. What
2 that reporting and analysis feeds in context is it
3 allows policymakers to make the best decisions because
4 their decision making is informed from the widest
5 possible ambit.

6 Q Sir, after PFC Manning compromised the
7 cables, was there change in the type of source
8 information, personal information of the people that's
9 drafted included in cables?

10 A Some embassies have changed that. That is
11 deleterious and we have -- we think we are losing
12 something in that regard. Not every embassy has,
13 however.

14 MR. COOMBS: 1001B4.

15 THE COURT: Thank you.

16 Q Did you correct that change or is that --

17 A It is self-generated at various embassies.

18 Q Okay. Sir, why did the Department of State
19 provide other agencies, as you've already testified
20 about, access to the diplomatic reporting?

21 A The State Department is represented in

1 280-some odd posts around the word. We have the widest
2 geographically dispersed representation of any U.S.
3 Government agency, period, and that means that our
4 personnel are doing reporting and analysis from more
5 locations with more personnel than any other U.S.
6 Government agency and, therefore, these other U.S.
7 Government agencies want the widest possible range of
8 reporting to -- if nothing more to interleave or
9 compare and contrast with other reporting that they may
10 be receiving from other U.S. Government agencies.

11 So these agencies need our reporting and
12 analysis in order to inform their part of the national
13 security including economic security and national
14 security.

15 Q Sir, I have a few more questions for you.

16 Sir, this is just a yes or no question. Do
17 you have an opinion on whether these disclosures
18 impacted the Department of State?

19 A Yes.

20 Q And, sir, how confident are you in that
21 opinion?

1 A Totally confident.

2 Q Sir, what is your opinion on whether these
3 disclosures impacted the Department of State?

4 A These disclosures, had a chilling effect on
5 foreign officials, governmental and non-governmental
6 willingness to engage in full and frank discussions
7 with us which is detrimental to us assisting in our
8 responsibilities to protect the national security.

9 MR. COOMBS: Your Honor, 1001B4 and
10 speculation.

11 THE COURT: Go ahead.

12 Q Sir, a yes or no question.

13 Do you have an opinion on whether these
14 disclosures will continue to impact the Department of
15 State?

16 A Yes.

17 Q Sir, how confident are you on that opinion?

18 A Totally confident.

19 Q Sir, what is your opinion on whether these
20 disclosures will continue to impact the Department of
21 State?

1 A We have had situations in which
2 individuals, for example --

3 Q I'm sorry to interrupt you, sir. Without
4 giving examples, sir, if you could, just explain why
5 you believe these disclosures will continue to impact
6 the department.

7 A Certainly. The underpinning of diplomatic
8 reporting and analysis is full and frank discussion
9 with foreign officials. I believe those foreign
10 officials feel that in many cases that they do not have
11 the ability to engage in that same level of full and
12 frank conversation because of what has happened and,
13 therefore, that is a chilling effect that will go on
14 for some time. People have long memories.

15 MR. COOMBS: Your Honor, again, 1001B4,
16 speculation.

17 Q Sir, a yes or no question.

18 Do you have an opinion, sir, on whether
19 these disclosures impacted policymakers who rely on
20 diplomatic reporting?

21 A Yes.

1 Q Sir, how confident are you in that opinion?

3 Q Sir, what is your opinion on whether the
4 disclosures impacted policymakers that relied on
5 diplomatic reporting?

8 THE COURT: Foundation is one of the
9 objections?

11 THE COURT: All right. Proceed. You can
12 develop your foundation, should you have any additional
13 foundation you want to add.

15 (Pause.)

18 THE COURT: Proceed.

20 Q Sir, to reask the question, what is your
21 opinion on whether these disclosures impacted

1 policymakers that relied on diplomatic reporting?

2 A Policymakers, in order to develop the best
3 course of action for the U.S. national security need
4 the best possible reporting and analysis from the State
5 Department as its contribution and absent a full and
6 frank discussion, which I believe has been chilled,
7 they then do not get the best possible reporting and
8 analysis that would enable them to do potentially a
9 better job in supporting our national security.

10 MR. FEIN: Thank you, sir.

11 Your Honor, there are no further questions.

12 THE COURT: Okay. You guys want a recess
13 before you go?

14 MR. COOMBS: Yes, Your Honor. If we
15 could -- come back maybe 25 after.

16 THE COURT: Ambassador Kennedy, please
17 don't discuss your testimony or knowledge of the case
18 with anyone other than counsel and the accused while --
19 well, don't discuss your testimony with anybody during
20 the recess.

21 THE WITNESS: Yes, Your Honor.

1 THE COURT: I'm sorry, how long did you
2 need?

3 MR. COOMBS: Just until 25 after.

4 THE COURT: All right. Court is in recess
5 until 25 after 11:00.

6 THE CLERK: All rise.

7 (There was a recess taken at 11:13 and the
8 trial resumed at 11:25 a.m.)

9 THE CLERK: All rise.

10 THE COURT: Please be seated. The court is
11 called to order. All parties present when the court
12 last recessed are again present in court. The witness
13 is on the witness chair.

14 Proceed, Mr. Coombs.

15 MR. COOMBS: Thank you, Your Honor.

16 EXAMINATION BY MR. COOMBS:

17 Q Under Secretary Kennedy, I remind you
18 you're still under oath.

19 A Yes, sir.

20 Q Okay. I want to start off by asking you a
21 few questions about the use of cables with the

1 Department of State.

2 A Okay.

3 Q The State Department has historically
4 accomplished the basic communication between Washington
5 and its overseas posts through the use of diplomatic
6 cables?

7 A Yes.

8 Q And you would agree that United States
9 policy formulation is done at the State Department in
10 Washington and across inter-agencies?

11 A With input from the diplomatic reporting as
12 well as other input from other agencies.

13 Q Correct, but the actual formulation of the
14 policy is done here in Washington with inter-agencies,
15 correct?

16 A With input from diplomatic reporting.

17 Q All right, and the diplomatic cables that
18 you receive the input, that's not policy, though?

19 A (Pause.)

20 Q It's not a statement of policy, is it?

21 A No.

1 Q And diplomatic cables are not always
2 accurate?

3 A Diplomatic cables report the facts as they
4 are then known to the individuals who are doing
5 reporting.

6 Q My question is diplomatic cables are not
7 always accurate?

8 A I'm afraid I can't give you a yes or no
9 answer to that. To say yes, they're not always
10 accurate implies that there is a deliberate inaccuracy
11 in the reporting when the report is filed. Facts on
12 the ground can change and so an accurate reporting in
13 2002 may no longer be the case in 2003 but that, in my
14 opinion, does not make the report of 2002 inaccurate,
15 it just means the situation has been overtaken by
16 events between 2002 and 2003.

17 Q Let me then -- I think based upon what you
18 answered there, I'll take out the deliberate aspect
19 because that's not my question. So not a deliberate
20 inaccuracy within a diplomatic cable, but diplomatic
21 cables are not always accurate.

1 So if somebody reports something believed
2 to be true and immediately would find out is not true;
3 is that correct?

4 A That is possible, yes.

5 Q Now, a diplomatic cable is a report of
6 information or facts from a particular ambassador or
7 post, correct?

8 A It's a report from the post, yes.

9 Q And that is -- that cable is the view from
10 that particular post of the facts?

11 A Yes.

12 Q So that's the view from their vantage
13 point, what they believe might be the facts on the
14 ground where they're reporting from?

15 A Yes.

16 Q And each diplomatic cable that comes in
17 will have the ambassador's name on the bottom?

18 A That is a convention, yes.

19 Q And because it's a convention doesn't many
20 that the ambassador actually drafted that cable, right?

21 A That is correct.

1 Q If it dealt with routine administrative
2 matters, the ambassador might not have even reviewed
3 the cable?

4 A Correct.

5 Q And depending upon the size of the embassy
6 or post and the number of cases going out, an
7 ambassador might not even review a cable that has his
8 or her name on it?

9 A Well, the ambassador's name is on every
10 cable that goes out if he or she is present at the
11 post. But, yes, an ambassador does not physically
12 necessarily read every cable that goes out of the post
13 even though it bears his or her signature.

14 Q And the SIPDIS cables, those were
15 addressed -- when they the ambassador's name on the
16 bottom, they were addressed to the Secretary of State,
17 correct?

18 A All cables inbound from Washington as well
19 all cables outbound from Washington say either to or
20 from sec state.

21 Q And, obviously, that doesn't mean that the

1 Secretary of State reads all of these cables?

2 A That is correct.

3 Q And as you just said, the outbound cables
4 also have the Secretary of State's name on them?

5 A Correct.

6 Q And that clearly does not mean that the
7 Secretary of State wrote those cables, correct?

8 A Correct.

9 Q Read the cable?

10 A All, not necessarily.

11 Q Or even was aware that the cable went out?

12 A Depending upon the subject matter, yes.

13 Q And as you had earlier testified, that's
14 just kind of a coming convention that's a holdover of,
15 I guess, years gone by?

16 A It's a convention, yes.

17 Q Now, the Net Centric diplomacy database,
18 that was available to anyone who has SIPRNET access at
19 one point, correct?

20 A Correct.

21 Q And those cables that were shared on the

1 NCD database, they were all captioned with the
2 distribution caption of SIPDIS?

3 A Correct.

4 Q And within the State Department, the access
5 to and control over the cables and who it's distributed
6 to is controlled by the use of tags which I'm not going
7 to really talk about, but then also captions, correct?

8 A And a third element. It's called AMats and
9 I'm not sure what the acronym stands for, but it is, in
10 effect, an artificial intelligence that reads the
11 cables and depending upon keywords that it finds in the
12 message. So that would be captions, tags and AMats
13 would be formulate the distribution pattern.

14 Q And SIPDIS would be an example of one of
15 the distribution captions that you would use?

16 A Yes.

17 Q And with regards to the Department of
18 State, the advice and training that was put out to the
19 various embassies and posts was that SIPDIS caption
20 meant that it was appropriate to share with our
21 inter-agency partners; is that correct?

1 A Yes.

2 Q Now, there are, obviously, other more
3 sensitive captions that can be used for cables?

4 A There are lots of captions available for
5 use. Some of them are directional, some of them are
6 restrictive, yes.

7 Q And some of the captions that would
8 restrict the audience, narrow the audience who could
9 actually review them I'm just going to name a few and
10 tell me if you're aware of these or are familiar with
11 them. Statedisk or Statdisk?

12 A Statdisk, yes.

13 Q NODIS?

14 A Yes.

15 Q XDIS?

16 A Yes.

17 Q Roger?

18 A Yes.

19 Q Terror (phonetic)?

20 A Yes.

21 Q Okay. Now, I'm showing you what's been

1 marked as Defense Charlie-Charlie-Charlie for
2 identification. It is a portion of the Foreign Affairs
3 handbook.

4 Are you familiar with the Foreign Affairs
5 handbook?

6 A Yes.

7 Q And I hand the witness Charlie-Charlie for
8 identification or Charlie-Charlie-Charlie.

9 Do you recognize that?

10 A I recognize the format and I'm going to
11 assume that you've given me an accurate copy.

12 Q And the Foreign Affairs handbook has
13 several sections to it, correct?

14 A There are multiple volumes of the Foreign
15 Affairs handbook.

16 Q And the volume or the section that you have
17 in front of you, does that deal with just captions,
18 what captions mean?

19 A Chapter -- volume V deals with information
20 technology and telecommunications and the subsection
21 you have is labeled captions and handling instructions,

1 yes.

2 Q If you would, please, Under Secretary, just
3 kind of thumb through that for a moment and tell me
4 whether or not that kind discusses each of the possible
5 captions that you can have for a cable?

6 A (Pause.) It seems to -- it has lots of
7 captions that I recognize.

8 Q Underneath each of those captions it also
9 gives comprehensive instructions about when you would
10 use that caption; is that correct?

11 A Yes.

12 MR. COOMBS: I'm retrieving from the
13 witness Defense Exhibit Charlie-Charlie-Charlie for
14 identification and offering into evidence as Defense
15 Exhibit Charlie-Charlie-Charlie.

16 THE COURT: Any objection?

17 MR. FEIN: Lack of foundation, Your Honor.

18 THE COURT: What's missing?

19 MR. FEIN: Well, ma'am, Under Secretary
20 Kennedy didn't specifically remember that being -- that
21 being the actual Foreign Affairs handbook, where it

1 came from. He kept saying it appears to be this.

2 THE COURT: Why don't we do this. I'm not
3 going to initial off on it now. What I will do is
4 provisionally admit it. If you can find something that
5 can show me that it's an accurate version of the
6 Foreign Affairs I will admit it.

7 MR. COOMBS: Okay, your Honor.

8 THE COURT: Consider it provisionally
9 admitted for now.

10 MR. COOMBS: Just to lay the foundation,
11 having Defense Exhibit Charlie-Charlie-Charlie for
12 identification to the witness, is there anything on the
13 very top of that or bottom of that document that would
14 indicate to you that this is from the Department of
15 State.

16 THE WITNESS: As I said earlier, the
17 formatting and everything looks like pages from the
18 Foreign Affairs handbook. I just...

19 THE COURT: Do you have any reason to
20 question its accuracy?

21 THE WITNESS: No, but, as I said, depending

1 upon the questions that follow, I cannot, Your Honor,
2 state it with a hundred percent certainty that this is
3 an accurate copy of this chapter of five -- manual five
4 Foreign Affairs handbook.

5 I don't know that it's not, but I don't
6 know that is. So I'm not willing to certify that
7 this -- that I was presented as the Under Secretary For
8 Management, I would give it to staff and say if I was
9 submitting this to a court of law, I would go have it
10 validated that this copy that was being submitted was
11 going in was absolutely correct. I have no reason not
12 to believe it is, Your Honor, but I just don't have any
13 reason to know it is either.

14 THE COURT: I understand that. May I see
15 it for just a moment?

16 THE WITNESS: Certainly.

17 THE COURT: Here's what we're going to do.
18 I'm going to admit. Government, if you think there's
19 something that's not accurate about this document,
20 you're certainly free to advise the court and the court
21 will take action accordingly.

1 MR. FEIN: Yes, ma'am.

2 THE COURT: Defense Exhibit

3 Charlie-Charlie-Charlie for identification is admitted.

4 BY MR. COOMBS:

5 Q Ambassador Kennedy, I'm going to ask you a
6 few questions about various caption -- excuse me, Under
7 Secretary Kennedy, I'm going to ask you a few questions
8 about various captions. I wanted you to have the
9 benefit of that if you needed to look at something to
10 refresh your memory.

11 A Certainly.

12 Q Otherwise, your memory is perfectly fine.

13 With regards to status, status is used
14 basically to preclude initial distribution to other
15 federal agencies; is that correct?

16 A That's correct.

17 Q Status is basically for the internal
18 deliberative process for the State Department?

19 A No, I think it goes beyond that. It could
20 be that, it can be other things. It is simply a
21 caption to ensure that the distribution remains State

1 Department only. It could be deliberate, it could be
2 administrative, it could be any purpose in which the
3 originator wishes this material to remain only within
4 the State Department.

5 Q And basically by the use of that caption
6 that is when it, for whatever reason, it would be
7 either premature or just simply not the type of
8 information that you would want to share with
9 interagency partners?

10 A Again, there could be a huge range of
11 subjects. The salient item is that the originator says
12 that he or she wishes this to be handled only within
13 State Department distribution channels and no one else.

14 Q Now, with regards to NODIS, that caption
15 identifies messages of the highest sensitivity, but
16 basically between the president, the Secretary of State
17 and chiefs of mission; is that correct?

18 A Correct.

19 Q And not what fact, but can you provide us
20 with kind of an example of what would be a NODIS?

21 A I would say if an ambassador in a country

1 wished to provide information of the highest
2 sensitivity, let us say on ongoing negotiations about
3 conflict rationing between Xanadu and Shangri-La and,
4 because of the nature of the information, we were
5 restricting that to only certain -- a very, very
6 limited number of people.

7 Q And in with regards to the XDIS caption,
8 that is used for highly sensitive traffic between the
9 White House, the secretary, the deputy secretary and
10 the Under Secretaries of State?

11 A It has -- it has a variety -- a wide
12 variety of uses, but it is very close to what you said.

13 Q And can you provide us with just kind of a
14 general example, again, of what type of cable might be
15 an XDIS cable?

16 A Again, it depends upon the circumstances
17 and I would say probably you would find some arms
18 control negotiations material potentially in that
19 channel.

20 Q And then with regards to Roger, that's for
21 communications between the assistant secretary for

1 intelligence and research, I&R, and the chiefs of
2 mission; is that correct?

3 A That is an administrative channel. That is
4 not a reporting channel.

5 Q With a cable, though, that's labeled as a
6 Roger, can you give us an example of what type of
7 cable?

8 A No, not in this session.

9 Q Okay. And terror, that's a caption used
10 for messages related to information about terrorism; is
11 that correct?

12 A That is the channel used to call attention
13 to terrorist reporting, yes.

14 Q And these are messages, my understanding,
15 that can only be distributed to members of the
16 emergency action committee; is that correct?

17 A I would have to refresh my memory on that.

18 Q Are you -- again, in a very general
19 unclassified format, can you give an example of what a
20 terror type cable might be?

21 A A terror cable would be a report of a

1 potential terrorist attack.

2 Q Now, the SIPDIS caption, as we said, that
3 is a caption that is only used if it can be shared with
4 the interagency partners?

5 A No.

6 Q Okay. Can you go ahead and enlighten me?

7 A The State Department shares large numbers
8 of cables with the interagency partners and this -- to
9 answer the question, Your Honor, I have to go back to a
10 little history, if I might.

11 THE COURT: That's fine.

12 A The Department of Defense came to the State
13 Department mid 2000 or so and said that because of the
14 importance of State Department reporting to it and
15 because of the size of the defense department, the
16 current kind of push system in which the State
17 Department would dispatch cables to sec def, Secretary
18 of Defense, OSD, JCS, joint chiefs of staff, Fort
19 Richardson did not necessarily -- because of the size
20 of DOD, they would not necessarily get to potentially
21 the right elements within the Department of Defense

1 and, therefore, ask that a database be set up in which
2 the State Department would push reporting to that
3 database and then the DOD would be able to pull
4 information from that database based upon the needs of
5 the individual puller.

6 Q Now, with regards to the Defense Exhibit
7 Charlie-Charlie-Charlie, it lays out guidance for when
8 you would use the SIPDIS caption, correct?

9 A There are instructions there, yes.

10 Q And, again, those instructions indicate for
11 information messages deemed appropriate for release to
12 the U.S. Government interagency community?

13 A Correct.

14 Q And a SIPDIS caption message is never to be
15 combined with more restrictive captions such as NODIS,
16 XDIS, Roger or terror?

17 A Correct.

18 Q If a message carries conflicting captions,
19 the more restrictive caption is going to government?

20 A Correct.

21 Q So a SIPDIS caption, for instance, if it

1 does have more restrictive caption with it, it's not
2 going to go into the Net Centric diplomacy database?

3 A Correct.

4 Q Additionally, a SIPDIS caption is not
5 supposed to be used with Privacy Act information?

6 A That is correct.

7 Q So your meta channels, your HR channels, DS
8 channels, DSX channel, that stuff will not be in a
9 SIPDIS cable?

10 A That is correct.

11 Q Again, if you had a SIPDIS cable that had
12 this type of information, again, it would not be loaded
13 into the Net Centric diplomacy database?

14 A Yes. Well, if it had the other caption on
15 it --

16 Q Correct.

17 A -- it would cause it -- if the machine is
18 working correctly to what's called spill, meaning spill
19 to manual management upon arrival at its destination.

20 Q And drafting officers were directed,
21 basically, to use the SIPDIS caption only for those

1 messages that fit the requirements of SIPDIS?

2 A Correct.

3 Q And so they understood that these were
4 messages that were designed to be shared with
5 interagency partners?

6 A Correct.

7 Q And during the period from 2004 to 2010,
8 State Department had posted some 250,000 or so cables
9 to the Net Centric diplomacy database?

10 A Correct.

11 Q During that same period of time, the State
12 Department disseminated approximately 2.4 million
13 cables through other systems to our other 65 other
14 government agencies?

15 A I believe, yes. I recall that figure. I
16 would want to verify it. It's right within one or two
17 percent either way.

18 Q So I believe you testified at Congress that
19 basically ten times as many cables that were given
20 to -- well, actually, the amount of cables given to the
21 Net Centric diplomacy database during that same time

1 period, ten times that many cables were pushed out to
2 our interagency partners through other means?

3 A Correct.

4 Q So, obviously, the majority of the cables
5 that were being shared with interagency partners were
6 not SIPDIS cables?

7 A That is correct.

8 Q So the policy formulation and whatnot, that
9 wasn't entirely relied upon by SIPDIS cables, there
10 were other cables going out for policy and formulation?

11 A That is correct.

12 Q Do you know -- and you might not and that's
13 fine if you don't -- what percentage of Department of
14 State cables were labeled as SIPDIS cables on any given
15 year?

16 A No, I don't. I don't have that fact at
17 hand.

18 Q Was it, in a general standpoint, was it a
19 small percentage of the overall cables or a large
20 percentage of the overall cables that were labeled
21 SIPDIS or could you guess?

1 A It would be hard to guess because you would
2 first have to factor out all the administrative or
3 logistic cables that are sent and then you SIPDIS as a
4 percentage of other reporting cables and -- I'm sorry,
5 I don't have that number available to me.

6 Q That's fine.

7 Now, my understanding is that when it
8 received the SIPDIS caption, those types of cables were
9 automatically by the, basically, automated process put
10 into the Net Centric diplomacy database?

11 A That's correct.

12 Q There wasn't a person that was looking at
13 the cable first and then saying, yeah, that should go
14 into the Net Centric diplomacy database?

15 A Correct.

16 Q And in 2005 through 2010, if an ambassador
17 or somebody posted a cable that was SIPDIS, they
18 labeled it as SIPDIS, within minutes of them submitting
19 it, it would get put into the Net Centric diplomacy
20 database?

21 A Correct.

1 Q And after process, basically, and placed in
2 the Net Centric diplomacy database, it would be
3 available to anyone who had SIPRNET access?

4 A Correct.

5 Q And ambassadors and posts understood that
6 fact?

7 A Yes.

8 Q So fair to say that if somebody labeled as
9 SIPDIS, they knew that it would be accessible to the
10 million or so people who have SIPRNET access?

11 A I'm not sure that they knew that they were
12 a million or so people who had SIPRNET access, but they
13 thought that it was a category to make sure that the
14 Department of Defense had the material available to it
15 just like they would put other tags on the cable as
16 well.

17 Q And --

18 A As I mentioned earlier, there are other
19 ways to ensure that messages get to other users.

20 Q All right. And with regards to SIPDIS
21 cables, if you label it as SIPDIS, in your opinion,

1 would that state something about the type of
2 information that would be in SIPDIS cables?

3 A No.

4 Q And why not?

5 A Because it was -- its purpose was to get it
6 to that -- to the Net Centric database so it would be
7 available at the request of DOD more easily for defense
8 department and potentially other -- several other U.S.
9 government agencies also have access to SIPRNET which
10 is the Department of Defense classified database and
11 the SIP in SIPDIS stands for SIPRNET access.

12 Q And from your perspective, did you review
13 SIPRNET or SIPDIS cables, ever?

14 A I read cables all day long. I don't ever
15 really particularly look at the captions. I look at
16 the subject lines and I look at the summary paragraph
17 and then determine from the subject line and the
18 summary paragraph whether I need them to read the
19 entire message depending upon what is in the subject
20 line, what is in the summary paragraph.

21 Q Between 2005 and 2010, were the SIPDIS

1 cables available to you in some other way besides Net
2 Centric diplomacy database?

3 A Yes. Because I'm State Department, they
4 would be available on the State Department distribution
5 system.

6 Q And on that system, were they separated at
7 all from any cable with a different caption?

8 A No.

9 Q All right. Now, when the DOD material --

10 A Excuse me...

11 Q Go ahead.

12 A Cables like NODIS and Roger channel are
13 handled in very, very special ways. But in terms of
14 diplomatic -- routine and diplomatic and consulate
15 reporting, it could be SIPDIS, it could not be SIPDIS.
16 It would appear on my computer screen as a telegraphic
17 report from whatever embassy was the originator.

18 Q When purported material from the State
19 Department was allegedly given to Wikileaks, the State
20 Department immediately asked the chief of submission at
21 the affected post to review the purported department

1 cables, correct?

2 A Correct.

3 Q And the State Department also directed the
4 chiefs of mission to provide an assessment as well as a
5 kind overall summary of the effect that the release of
6 the purported cable could have on the host country?

7 A Correct.

8 Q In this review, an assessment was completed
9 in August of 2010?

10 A No, sir. The request that was completed in
11 August of 2010 -- not completed in August of 2010 is a
12 damage assessment. It was a damage assessment
13 commissioned and the damage assessment was -- drew from
14 reports from chiefs of mission, ambassadors, but the
15 damage assessment was never completed.

16 Q I'm not talking about damage assessment,
17 what I'm talking about is the review that you got from
18 the chief submission at the effective host.

19 A They were individuals submissions from
20 chief submission, yes.

21 Q And that was completed in August of 2010?

1 A There was, I guess -- I apologize. I guess
2 I'm hung up on the "it." There were individual chief
3 submission reports, but there is no it, there is no a
4 chief submission sent in a cable. So we had the cable
5 from all the chiefs submission. I'm sure they were put
6 in a binder, you know, alphabetically by post.

7 If that's the "it," yes.

8 Q Okay. And to make sure we're talking about
9 the same "it" then, you had testified about what the
10 Department of State had done in front of the senate
11 committee on Homeland Security and Governmental
12 Affairs?

13 A If you could read the section to me, I'd
14 appreciate it.

15 Q Before I do that, you did do that, correct?

16 A I testified before the senate committee,
17 yes.

18 Q And there you testified that we immediately
19 asked the chief submission effective post review and
20 record a state material in the release in the release
21 and provide an assessment as well as a summary of the

1 overall effect of the Wikileaks release could have on
2 relations with the host country following the
3 completion of this review in August.

4 A Okay.

5 Q So --

6 A All right. You're talking about August of
7 2010, not the August 2011...

8 Q I'm not talking about the assessment.

9 A Thank you. I just -- if we're talking
10 about 2010, I now understand your question.

11 Q Okay. So let me go back then. You had the
12 chief submission review, the reported State Department
13 material from their area, correct?

14 A Correct.

15 Q And you asked them to look at it and to
16 give their impressions on how that might affect
17 relations with the host country?

18 A Correct.

19 Q And they got back to you by August of 2010?

20 A Correct.

21 Q And when it was believed that the State

1 Department cables might actually be released, you then
2 again instructed all of the chief submissions to
3 familiarize themselves with the content within the Net
4 Centric diplomacy database?

5 A Correct.

6 Q Based upon that direction, again, you got
7 feedback from the chiefs submission?

8 A Correct.

9 Q And when the press and Wikileaks announced
10 that there was going to be a release of purported
11 cables on 28 November, 2010, that's when the State
12 Department took several additional actions?

13 A Correct.

14 Q And one of those was to create the
15 24-7 Wikileaks working group?

16 A Correct.

17 Q And as you had said, this was a working
18 group composed of senior officials throughout the State
19 Department?

20 A Correct.

21 Q To include your regional bureaus?

1 A Correct.

2 Q And how long did the 24-7 Wikileaks working
3 group conduct its work?

4 A I think it was several months. I don't
5 have the exact end date in mind.

6 Q Do you have an idea of what month they
7 stopped working?

8 A No, I don't. I'm sorry.

9 Q Less than six months?

10 A Less than six months.

11 Q Now, during this period, the Department of
12 State kept Congress apprized of its response to any
13 potential release by Wikileaks, correct?

14 A Correct.

15 Q And according to your testimony, the
16 department convened two separate briefings for memos of
17 both the House of Representatives and the senate within
18 days of December 2010?

19 A Correct.

20 Q And members of the department also appeared
21 twice in front of the House Permanent Select Committee

1 On Intelligence both on 7 December and 9 December,
2 2010?

3 A Correct.

4 Q And during those briefings, Department of
5 State officials informed Congress that the
6 administration felt compelled or Department of State
7 felt compelled to say publicly that the cable leak had
8 caused serious damage to American interests in order to
9 bolster the legal efforts to shut down the Wikileaks
10 website?

11 A You just read me a quotation. Are you
12 quoting me or are you quoting someone else, sir?

13 Q I'm asking, are you aware of Department of
14 State officials informing Congress that the
15 administration felt compelled to say publicly that the
16 cable leaks had seriously damaged American interests in
17 order to bolster legal efforts to shut down the
18 Wikileaks website?

19 A I was the briefing officer at both those
20 two House Permanent Select Committee On Intelligence
21 briefings and I don't remember saying that. I was --

1 Q You don't believe that is true?

2 A I believe it caused damage, yes. But I
3 don't think -- the end of it is compelled to say
4 something and I don't remember saying that.

5 Q All right. I understand your testimony
6 under oath here is that the State Department never
7 briefed to a House Permanent Select Committee that the
8 cable leaks in this instance, the administration felt
9 compelled to say publicly that the cable leaks had
10 seriously damaged American interests in order to
11 bolster legal efforts to shut down the Wikileaks
12 website?

13 A I recall saying -- talking about the damage
14 to the U.S. national security. I don't recall saying
15 that and I don't recall anyone saying that in my
16 presence.

17 Q During those briefings, do you recall
18 indicating to Congress or saying to Congress that the
19 impact of the cable release was embarrassing, but not
20 damaging?

21 A I never said that.

1 Q Anyone else from the Department of State?

2 A Not in my presence, sir.

3 Q So again, under oath here today, you are
4 saying that when you briefed congress, the State
5 Department never stated to Congress that the impact of
6 the cable release was embarrassing but not damaging?

7 A I do recall that having been said.

8 Q Now, I want to address a couple of the
9 potential harms that have been documented and you
10 testified to one of those here today. Okay?

11 A Counsel, yes.

12 Q Now, there have been two types of potential
13 chilling effects from the alleged leaks, the first that
14 the State Department will stop sharing information with
15 other agencies and the second that countries or
16 individuals may stop being open and frank with us as
17 State Department members; is that correct?

18 A No, I've only described the second. I have
19 never gone to the first.

20 Q Well, that's not quite true. You've gone
21 to the first when you testified in front of the House

1 Permanent Select Committee, correct?

2 A No, I said -- I believe I said -- and I
3 would have to go back and see if I can obtain the
4 classified transcript of that briefing -- that we were
5 certainly cutting off distribution via SIPRNET. We're
6 cutting off distribution --

7 Q I have a clip from your testimony --

8 A We're cutting off distribution via SIPRNET,
9 but we are not cutting off distribution via what we
10 called legacy SIPs which are the other distribution
11 systems. So cut off the one, but not the other. So
12 the traffic would still be available to policymakers
13 through legacy systems.

14 Q Secretary Kennedy, I'm going to play a clip
15 from your testimony and then ask you to comment on it.

16 THE COURT: Are these marked in some
17 fashion?

18 MR. COOMBS: They're going to be, Your
19 Honor. We may need to take a slight break. For
20 whatever reason, it's not coming up.

21 BY MR. COOMBS:

1 Q Again, you recall testifying in front of
2 the House Permanent Select Committee?

3 A Yes.

4 Q I'd like to play --

5 (Recorded MPEG clip starts playing...)

6 A Everything I've said to you -- your
7 question was, counsel, your testimony for the house
8 permanent select committee. This is not that testimony
9 before the House Permanent Select Committee. This is a
10 different hearing, so...

11 Q My question to you, Under Secretary
12 Kennedy, was had you testified about the two chilling
13 effects. You indicated that you never testified about
14 the --

15 A Counsel, I believe you were talking
16 about -- you said the House Permanent Select Committee.

17 Q I'll repeat my question and then I'll see
18 if I need to play this, okay?

19 A Right.

20 Q So I'll repeat the questions as I ask them
21 to you word-for-word. I want to address a couple of

1 potential harms that have been documented basically to
2 you, the two types of potential chilling effects from
3 the alleged leaks.

4 The first, that the State Department will
5 stop sharing information with other agencies and the
6 second that other countries or individuals may no
7 longer share information with us. You indicated that
8 you never had testified about the former.

9 Is that true or not true?

10 A We're talking now about the senate
11 committee. The questions posed were two-fold. Since
12 the senate homeland committee was very, very concerned
13 about -- since Senator Lieberman and Senator Collins,
14 who are the chair and co-chair of that committee, they
15 were very concerned about information sharing because
16 they had been -- they were the authors of the
17 Intelligence Reform and Terrorism Prevention Act.
18 Their question was directed at was the State Department
19 going to cut off the defense department from the
20 intelligence information and --

21 Q My question, though, Under Secretary, is

1 there were two types of possible chilling effects, the
2 first the State Department will stop sharing
3 information with other agencies.

4 Did you testify about that potential
5 chilling effect?

6 A To Homeland Security and the senate, yes.

7 Q All right. And you testified there that
8 the State Department had avoided that first kind of
9 chilling effect?

10 A The chilling effect on the distribution to
11 other government agencies, yes.

12 Q All right. You said while the State
13 Department at that point had stopped its dissemination
14 of these purported cables on SIPRNET, they continued to
15 disseminate to the intelligence community system
16 throughout other sources, one was JWICS, correct?

17 A Correct.

18 Q You continued to disseminate the same
19 volume of material at the same rate with the 65 other
20 U.S. government agencies after the purported leak?

21 A Yes, sir.

1 Q And the State Department, in your words,
2 don't hold anything back?

3 A Correct.

4 Q All right. Now, the second type of
5 potential chilling effect, that is, whether or not
6 foreign governments or citizens of foreign countries
7 would be willing to share information with us.

8 The State Department has avoided that
9 chilling effect too?

10 A I do not believe so.

11 Q Are you familiar with then Secretary
12 Clinton's statement that diplomatic cables, again, are
13 not always accurate?

14 Are you familiar with her saying that?

15 A I believe that she -- the Secretary of
16 State did give a press conference in 2010 after the
17 first traunch of Wikileaks, yes.

18 Q Are you familiar with her saying that, in
19 her opinion, the diplomatic cables are basically
20 passing on information for whatever it's worth?

21 A I would have to see what she said, but I

1 remember that press conference, yes.

2 Q Do you recall her then saying that most
3 leaders understand this fact, that cables are not
4 always accurate, they're passing on information for
5 whatever it's worth and that she's found no hesitancy
6 on the part of leaders to share information?

7 A That does not contradict my statement that
8 there was a chilling effect on diplomacy reporting and
9 analysis.

10 Q I understand that's your opinion. My
11 question to you was: Are you familiar with her
12 statement saying that she has found no hesitancy on the
13 part of leaders to share information?

14 A No part on the part of leaders sharing
15 information with her, yes.

16 Q Okay. So you would agree with me that,
17 obviously, countries, whatever country we're dealing
18 with, they act in their own interest?

19 A Correct.

20 Q And the interests of each country are
21 pretty well defined by their -- either place in the

1 world, their economy or their history?

2 A And current circumstances, et cetera.

3 There are multiple factors, yes.

4 Q But these countries -- we have a -- you
5 name a country, we can have a pretty good idea of their
6 general interests and what they would want to have
7 happen or not happen as far as their interests are
8 pretty well defined?

9 A That's a very, very broad statement and I
10 will say yes to it as a very, very broad statement.
11 Obviously, there are many exceptions that occur in
12 individual circumstances, a given country and a given
13 situation at a given time.

14 Q Other countries, their diplomacy is not
15 based on whether or not they think an unpleasant
16 article may be put out in the press if they speak
17 freely with us?

18 A That is correct. That is correct in that
19 sense, but it does not go to the point that you're
20 asking me about, is the chilling effect on individual
21 members of that government or individual members of the

1 private sector in that country being willing to share
2 personal opinions with United States diplomats.

3 Q Okay. My question here, though, is that
4 other countries' diplomacy is not based on whether or
5 not they think there's going to be an unpleasant
6 article written about them if they speak freely?

7 A There's no yes or no answer to that
8 question, counselor.

9 Q Well, do you believe, I guess, other
10 countries' diplomacy is based upon whether or not they
11 think an unpleasant article is going to be published
12 about them if they speak freely?

13 A I think there are circumstances when
14 certain governments would base their diplomacy on that,
15 yes.

16 Q All right. I'm sure you're familiar with
17 the comments and opinions of former secretary, Robert
18 Gates concerning the release of purported cables?

19 A I recall generally his statements.

20 MR. COOMBS: What I'd like to do is I'd
21 like to -- and, Your Honor, for the record, I started

1 to play a portion of Under Secretary Kennedy's
2 testimony. I'll have that marked -- it's on a CD.
3 I'll have that marked now.

4 For the record, I also have another CD.
5 I'm going to play a portion of Secretary Gates's
6 statement and ask Under Secretary Kennedy to give his
7 opinion on that.

8 THE COURT: All right. Go ahead.

9 (MPEG clip began playing.)

10 MR. GATES: "Now, I have heard the impact
11 of these releases on our foreign policy described as a
12 meltdown, as a game changer and so on. I think those
13 descriptions are fairly significantly overwrought.

14 The fact is governments deal with the
15 United States because its in their interest, not
16 because they like us, not because they trust us and not
17 because they believe we can keep secrets. Many
18 governments -- some governments deal with us because
19 they fear us, some because they respect us, most
20 because they need us. We are still essentially -- it's
21 been said before -- the indispensable nation.

1 So other nations will continue to deal with
2 us. They will continue to work with us. We will
3 continue to share sensitive information with one
4 another. Is this embarrassing? Yes. Is it awkward?
5 Yes. Consequences for U.S. foreign policy? I think
6 fairly modest."

7 (MPEG clip ceased.)

8 BY MR. FEIN:

9 Q Is that the statement that you were
10 familiar with, Under Secretary?

11 A I believe -- yes, I believe that was a
12 statement Secretary Gates made in 2010.

13 Q All right. And do you disagree with his
14 statement?

15 (Loud audio sound.)

16 A I do not disagree with his statement, but I
17 don't it contradicts the statements I have made either.

18 Q And why not?

19 A Because what Secretary Gates is correctly
20 talking about is government to government interaction,
21 but what I'm talking about is diplomacy reporting which

1 is both government to government, but it is also the
2 interaction between individual U.S. diplomats and
3 government officials who give us their views in the
4 expectation of privacy and about U.S. diplomats
5 interacting with private sector businessmen, other
6 officials, non-governmental officials in a host country
7 and so the chilling effect on those interactions remain
8 valid and are not contradicted by Secretary Gates's
9 statement and nor are they encompassed in Secretary
10 Gates's statement.

11 Q With regards to the other individuals that
12 you're talking about, members of -- not the government,
13 but you're talking about your average citizen or
14 somebody who lives in the country?

15 Who are you talking about?

16 A No, sir. I'm talking about government
17 officials who render us their private opinions, their
18 private analysis which is important in helping us
19 formulate. I'm talking about it could be senior
20 businessmen, it could be senior members of the
21 educational system. It could be senior members of the

1 press. It could be senior NGO officials.

2 Those are equally important in
3 understanding, in terms of U.S. national security,
4 where a nation might be going and that analytical
5 information is critical and that is the chilling we're
6 talking about.

7 Q And that chilling that you're talking about
8 is based upon what you perceive or what you have heard
9 from others a chilling effect?

10 A It is what has been reported to me --
11 examples and I'd be glad to go into examples in closed
12 session --

13 Q Can I ask you a particular question?
14 Have you had anybody come to you and say
15 "I'm no longer giving you as much information as I have
16 in the past?"

17 A It has been reported to me that foreign
18 officials have said the equivalent to our diplomats
19 overseas -- not to me, I'm in Washington -- but have
20 said similar constraining statements to U.S. diplomats
21 overseas.

1 Q So, for you, that answer would be no, you
2 haven't had anybody come to you and indicate that we're
3 no longer sharing as much information with you in the
4 past?

5 A To me personally, no. But I am only one of
6 10,000 State Department diplomats and others have had
7 it said to them.

8 Q You say that they're not sharing
9 information then. You are, at that point, believing
10 that there is some deficit in the information that they
11 would have been otherwise shared, correct?

12 A Correct.

13 Q So it is potentially, kind of to use
14 Secretary Rumsfeld, "the known unknowns?"

15 Is that what you were talking about?

16 A I'm not sure it's a known, unknown. It is
17 more likely that we have, over the course of the years,
18 had robust dialogue with officials, governmental and
19 non-governmental of very senior levels in society
20 across the world and there is less frankness, less
21 fulsome discussions now than there were before.

1 Q And again, that's based upon a perception?

2 A That's based upon individuals saying to
3 State Department diplomats that they doubt that or
4 taking other actions to restrict those -- that
5 frankness.

6 Q Are you familiar with who Alex Ross is
7 within the Department of State?

8 A Alex Ross was an information technology
9 guru at the State Department until 2012, I believe.

10 Q Are you aware of his statements regarding
11 the purported leak of the diplomatic cables?

12 A No, I don't remember ever seeing Alex's.

13 Q I'd like to play his statement for you and
14 then see if you would agree or disagree with it.

15 (MPEG file played.)

16 BY MR. FEIN:

17 Q Were you aware of that statement?

18 A No, I have not seen Alex's statement
19 before. But, again, like Secretary Gates, I do not
20 disagree with his statement, but I do not find it
21 relevant to the point I've been making.

1 Alex Ross was talking about we do not need
2 to be embarrassed by the reporting cables that were
3 filed. That's not what I'm addressing, this particular
4 thing.

5 I'm addressing the fact that because of the
6 information and because of the fact that people know
7 that there's been a breach of privacy and that they no
8 longer have the expectation of the privacy, that they
9 less willing to engage in the full and frank discussion
10 and exchange of ideas that they were willing to engage
11 in before. So Alex's statement is true and so is mine.

12 Q Okay. With regards to the purported
13 release, the purported SIPDIS cables range from 28
14 December, 1966 to 28 February, 2010; is that correct?

15 A I believe that's correct, yes.

16 Q And the vast majority of these purported
17 cables from came 2004 or later?

18 A I believe that's correct, yes.

19 Q And that was roughly the time period in
20 which cables were beginning to be shared on the Net
21 Centric diplomacy database?

1 A That is how SIPDIS -- that's where SIPDIS
2 cables went, was to the Net Centric diplomacy database,
3 yes.

4 Q And of the 251,287 reported SIPDIS cables,
5 133,887 of them were unclassified; is that correct?

6 A I think that's about right. It was about
7 50/50 if my recollection is correct, yes.

8 Q And then 101,748 were classified as
9 confidential?

10 A I believe that's also correct.

11 Q And finally, 15,652 were classified as
12 secret?

13 A Correct.

14 Q And you conducted a classification review
15 of a certain subset of the purported Department of
16 State cables?

17 A Are we referring, counsel, to the filing of
18 the 100 or so cables --

19 Q Yes.

20 A Yes.

21 Q So you did a classification review of those

1 cables?

2 A Correct.

3 Q And you were selected to do that review
4 based upon, basically, your duty position?

5 A Yes, the Under Secretary For Management's
6 responsibility is the senior classification officer by
7 delegation from the Secretary of State.

8 Q And prior to this one, you had never done a
9 classification review before?

10 A I looked at individual cables. I had
11 classified cables, but I had not done -- I have not
12 done a filing such as this, no, sir, never before.

13 Q And you had assistance, obviously, in
14 completing this classification review?

15 A Yes.

16 Q And who, in general, assisted you?

17 A This was subject matter experts within the
18 State Department, both subject matter as to the rules
19 and regulations of classification and subject matter as
20 to the content of the cable.

21 So the regional or functional bureau,

1 experts on that matter and the classification experts
2 from the department to the rules and regulations.

3 Q And how did they assist you in the review?

4 A They prepared what is called an action memo
5 to me which is a memo saying that we've conducted the
6 review, here is the material outlined, the situation
7 and said do you concur or non-concur, do you approve or
8 disapprove the attached filing. So I read through the
9 filing and concurred in it.

10 Q No one actually sat down and briefed you on
11 any of the hundred or so purported cables?

12 A No, no one sat there and briefed me on
13 every cable.

14 Q And when you reviewed the document, the
15 document that you reviewed was ultimately the document
16 that you signed; is that correct?

17 A That's correct and I also had -- I
18 believe -- if my recollection is correct -- this is
19 sometime ago -- I believe I also had a binder which had
20 the cables themselves.

21 Q Did you actually type any of the

1 classification review?

2 A No, sir.

3 Q Did you make any changes to the
4 classification review?

5 A No, because I concurred in it.

6 Q And you indicated that you thought you had
7 an attachment with the hundred or so purported cables?

8 A To the best of my recollection.

9 Q Did you read each cable from start to
10 finish as you were doing your classification review?

11 A I would read the document and I think I
12 skimmed through the cables.

13 Q So the answer would be no, you didn't read
14 each --

15 A I did not believe I read each cable
16 word-for-word, no.

17 Q What classification guide did you use to
18 complete your classification review?

19 A The current classification guide which is
20 confidential. You have damage, grave damage and
21 exceptionally grave damage, confidential, secret and

1 top secret.

2 Q Did you actually have that classification
3 review next to you as you were doing this -- excuse me,
4 classification guide?

5 A No, sir.

6 Q What is --

7 A When you classify cables you have taken in
8 what the guidelines are and then you do that -- since I
9 classify cables all the time, I know what the rules
10 are. When I'm reviewing something that someone else
11 classifies, I use the same processes when I would
12 classify a cable in my own right.

13 Q All right. So then you didn't feel the
14 need at that point, based upon your experience and
15 knowledge, to use a classification guide?

16 A No, sir. I used the principles of the
17 classification guide, not a hard copy.

18 Q And what experience do you have in using
19 the classification guide, actually physically using it?

20 A I -- as the agency officer in charge of
21 classification, I am the person who signed and approved

1 the classification guide and also from 1993 to
2 2001 when I was assistant Secretary of State for
3 administration, the classifications and records
4 management office in the department worked directly for
5 me. So I have an intimate knowledge of how they work
6 in the processes.

7 Q When you say they worked for you, were you
8 actually reviewing what was put into the classification
9 guide or based upon your position were they simply
10 telling you their complete classification guide and
11 then giving it to you for your signature?

12 A They would give it to me for my concurrence
13 or clearance.

14 Q Before you signed it, I guess, did you
15 review the entire classification guide?

16 A I read what I sign.

17 Q All right. So I guess the exception, then,
18 would be just reading the entire cables when you're
19 doing the classification review?

20 A That is correct.

21 Q Now, you had testified about -- now we're

1 talking about the August of 2011 damage assessment,
2 okay?

3 A Okay.

4 Q Did you review that draft damage assessment
5 from start to finish?

6 A I read the entire damage assessment, yes.

7 Q Okay. Was this something else that you had
8 signed?

9 A I never signed it.

10 Q Was it done at your request?

11 A I requested it be done, yes.

12 Q And was it something that needed to have a
13 signature then?

14 A I would have approved it. If it had
15 been -- August of 2011, if it would have been the
16 damage assessment. But given the passage of time and
17 its preparation and as we were reviewing it, we were
18 marching on to the Labor Day release of the next
19 traunch of cables.

20 I decided that the damage assessment draft
21 was a snapshot in time which was not an accurate

1 representation of the situation because the next
2 traunch of Wikileaks material purported cables was
3 about to be released and, therefore, saying that this
4 represented the damage assessment would have been an
5 inaccurate statement for me to make and approve.

6 Q All right. And you had indicated that
7 because of the fax that the State Department viewed
8 this as a crisis, that you basically went into a crisis
9 management mode?

10 A Correct.

11 Q And, obviously, by just using the term
12 crisis, that means it's something that's serious?

13 A Correct.

14 Q And you said on direct that it was, in
15 fact, very, very serious and that's why you had --

16 A Correct.

17 Q -- conducted your response. And that's why
18 you have impact review going initially to see what the
19 impact was of the purported leak; is that right?

20 A Correct.

21 Q You had indicated that you reviewed this

1 draft in August of 2011, but you, at least at the time
2 of the draft, you -- did you approve or not approve of
3 what was said in the draft?

4 A It never reached that point. I did not
5 approve or disapprove it because there was a second
6 traunch of documents coming and that for me to have
7 said this represents a damage assessment for the
8 purported Wikileaks release would have been inaccurate
9 because it was not the entire scope.

10 Q All right. You indicated it was a
11 snapshot, basically, is what you thought up until that
12 point?

13 A It was a snapshot, yes.

14 Q And it was a snapshot up until that point,
15 August of 2011?

16 A It was a snapshot of the first traunch,
17 yes.

18 Q And you haven't updated this damage
19 assessment since?

20 A Correct.

21 Q You haven't taken any more snapshots in

1 time?

2 A No.

3 Q And it's obviously possible to do that, is
4 it not?

5 A It is.

6 Q And isn't it possible, if you don't do
7 that, that you would miss something?

8 A No.

9 Q You don't think it's possible that you
10 might miss some potential damage if you don't do a
11 Department of State-wide damage assessment?

12 A No, because a damage assessment of this
13 nature is very different in my mind from other damage
14 assessments that are done.

15 Other damage assessments to which I'm aware
16 of or compromise of a piece of equipment or a case of
17 an individual with limited access that he or she has to
18 a string of cases. At 251,000 cables, this is a much
19 wider range and, therefore, the scope of damage is much
20 wider.

21 Q Right, but if you took snapshots in time, I

1 guess maybe at the end of 2011, end of 2012, maybe
2 coming up end of 2013, you would have snapshots as to
3 the damage at that point, would you not?

4 A It's a very, very labor intensive activity
5 to engage in such damage assessments. The damage
6 assessments -- we are aware of the damage that has been
7 done as I outlined the chilling effect and, therefore,
8 I do not see a need to do a snapshot now because the
9 damage continues to roll on.

10 Q Now, I guess -- I mean, that's obviously
11 your opinion, that it continues to roll on. If you did
12 a final damage assessment or damage assessment that was
13 a snapshot, we would have a State Department position
14 as to what the damage was at that point, would we not?

15 A Snapshots, I do not believe are a valid
16 tool when you have an ongoing situation.

17 Q Do you know whether or not there is a final
18 damage assessment in the works?

19 A I'm not aware of a State Department final
20 damage assessment in the works, no.

21 Q Has anyone ever spoken to you or indicated

1 to you that a final damage assessment will be completed
2 at some point?

3 A I know that the Department of Defense has
4 done work and I believe the intelligence community has
5 done work. But in terms of the State Department, no.

6 Q Now, obviously, you had indicated that you
7 were -- have been a part of the Department of State
8 since 1973?

9 A Yes, sir.

10 Q And clearly, being part of an organization
11 for this length of time, you have a vested interest in
12 making the Department of State look good?

13 A That's another question that I don't think
14 is amenable to a yes or no answer.

15 Q Okay. You don't have to simply limit it to
16 a yes or no. You can give me a longer answer if you
17 wish.

18 A Of course, I've been a foreign service
19 officer for 40 years. Of course, I am proud of the
20 agency at which I work. I am proud of our agency's
21 contribution to the national security, but I don't

1 think that pride goes to the point of saying that I
2 will defend the State Department at any cost and/or
3 defend the State Department when it's wrong.

4 Q Now, let's talk about this draft damage
5 assessment a little bit more.

6 Obviously, it was an investigation as to,
7 at that point, what the damage was, would you agree?

8 A It was a review of reports from the field,
9 yes.

10 Q And just as a general standpoint or
11 proposition, it's important to complete investigations?

12 A This is not an investigation. I totally
13 agree with -- if you take the word investigation,
14 investigation has a particular art form, I'm sure, in
15 the law enforcement community and I know what
16 investigations are because the State Department's law
17 enforcement arm works for me, but this was not an
18 investigation. This was an analysis and the snapshot
19 analysis has not been completed because the damage
20 continues to roll out.

21 Q Well, obviously, you had just testified

1 that you would have no desire to minimize an
2 investigation just because it might make the State
3 Department look bad; is that correct?

4 A I said -- absolutely. I said I have no
5 desire to either perjure myself or lower my standards
6 by doing something that's inappropriate.

7 Q And with regards to an investigation, if
8 the investigation indicated or a damage assessment
9 indicated that there was no damage or it was simply
10 embarrassment, then, at that point, based upon what you
11 just said, your interest would be to have that
12 completed and known; is that correct?

13 A Well, if we were talking about an informal
14 investigation or if we had talked about -- if we are
15 talking about a snapshot that showed that there was no
16 damage, I would take that position. But this was not a
17 investigation. This was an analysis and the analysis
18 didn't -- even, at the snapshot point in time, did not
19 show no damage.

20 Q All right. And even at this point, though,
21 there's been no need or desire to do another snapshot?

1 A No, sir.

2 Q You had said that your desire would not be
3 to stop an investigation or cease an investigation just
4 because it might make the State Department look bad,
5 right?

6 A I said I would not stop an investigation
7 just because it would make the State Department look
8 bad, yes.

9 Q Is there any sort of investigation now into
10 you for that very thing of stopping an investigation?

11 A There is somebody who wrote a letter saying
12 that I stopped an investigation, yes.

13 Q And is that being investigated at this
14 point?

15 A Of course, when something is investigated,
16 it's looked into by the State Department's IT.

17 Q And is the allegation essentially that you
18 stopped the investigation in order to avoid the State
19 Department from looking bad?

20 A No, I have no idea what the allegation is.
21 It just says that I stopped an investigation and it

1 happens to be entirely false.

2 Q Okay. The ambassador that had dealt, was
3 that person replaced?

4 A The individual who was there had a
5 four-year appointment and when administrations change,
6 including a president to a reelected sitting president,
7 the four years is up and the individual did not leave
8 short of tour. No, he was not replaced because of the
9 accusations. His tour was up.

10 Q And currently, right now, you said that
11 investigation is ongoing?

12 A I believe the -- you would have to ask the
13 inspector general. That inspector general is outside
14 of my purview.

15 MR. COOMBS: No further questions.

16 THE COURT: Government, you want to recess
17 before we go to redirect?

18 MR. FEIN: Yes, ma'am.

19 THE COURT: How long?

20 MR. FEIN: May I have a moment, Your Honor?

21 (Pause.)

1 Ma'am, may we have a ten-minute recess? We
2 don't anticipate a long redirect, ma'am.

3 THE COURT: Under Secretary Kennedy, same
4 rules apply. Please don't discuss your testimony
5 during the recess. Court will be in recess until in
6 ten minutes to 13:00.

7 THE CLERK: All rise.

8 (There was a recess taken at 12:38 and the
9 trial resumed at 12:51 p.m.)

10 THE COURT: Please be seated. Court is
11 called to order. Let the record reflect that all
12 parties present when the court last recessed are again
13 present in the court. The witness is on the witness
14 stand.

15 Redirect?

16 MR. FEIN: No, ma'am.

17 THE COURT: Under Secretary, I have a
18 couple of questions. I just need to find them. You
19 testified earlier that -- I just found them.

20 You testified earlier on direct examination
21 that I believe -- and please correct if I have

1 misquoted your testimony -- that there were
2 approximately 250,000-plus cables on the NCD database
3 on the SIPRNET back in 2010?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: And that there were
6 approximately \$2.4 million other cables?

7 THE WITNESS: Well, the State Department
8 produces, as I mentioned, lots of diplomatic reporting
9 and other administrative cables. Only a certain
10 percentage of those carried the SIPDIS caption which
11 then pushed them into the NCD, the Net Centric
12 database.

13 There was a full range of different types
14 of reporting in there and there was a full range of
15 reporting on the cables as well.

16 THE COURT: So these other 2.4 million
17 cables, I know you testified in response -- I believe
18 it was to Defense counsel's questions -- that there
19 were a variety of different kinds of distribution
20 systems that were very limited like NODIS and some of
21 the other ones.

1 THE WITNESS: Yes.

2 THE COURT: So was it the Department of
3 State's intent to release or allow other agencies to
4 view cables that could help them in their national
5 security jobs --

6 THE WITNESS: Absolutely.

7 THE COURT: -- with SIPDIS?

8 THE WITNESS: Both SIPDIS and what we just
9 called, for want of a better term, the legacy
10 distribution systems. We pushed cables out to a wide
11 range, classified and unclassified.

12 For example, we send cables to the Food &
13 Drug Administration. We send cables to the
14 export/import bank. It depends on what the subject
15 matter of the cable is. We get them to whatever U.S.
16 Government agency needs that cable in order to do its
17 mission.

18 SIPDIS was an invention at the request of
19 the Department of Defense and the intelligence
20 community, Office of the Director of National
21 Intelligence saying -- trying to help in the

1 distribution of cables at the agency end, that the
2 system we had which simply pushed the cables from the
3 State Department's communication center to the
4 communications center of the other agency where they
5 then had to direct them to the respective entities in
6 their entities. They were having a problem with that.

7 So can you push some of your reporting
8 cables to this Net Centric diplomacy database using the
9 SIPDIS caption and then the appropriate analyst would
10 pull the cables in their area of responsibility down
11 and it was an attempt to ease the distribution burden
12 on the part of the other agencies. But this is all
13 part of our intent to the State Department diplomatic
14 reporting available to any agency of the United States
15 government with classified personnel who will maintain
16 because we have an agreement that goes back years and
17 years with the Department of Defense, for example, that
18 says that the agency receiving the classified material
19 takes responsibility for ensuring that those who are
20 given access to it have the appropriate clearances
21 because it would be -- for the State Department to try

1 to find analyst A at Fort Huachuca or analyst B in
2 Bolling or analyst C at Fort Gordon. That is just
3 simply beyond our kin. So we push it out and then
4 other agencies either distribute it or they pull it.

5 THE COURT: All right. Thank you.

6 Just shifting to another area now, you
7 testified, in your opinion, that the communications
8 between -- not from government to government level, but
9 with the diplomats and the people they talked to in the
10 foreign countries is chilled and I believe you
11 testified that that was reported to you.

12 How frequently?

13 THE WITNESS: We have examples and I would
14 be --

15 THE COURT: I'm not asking you to go into
16 the specifics. Just give me a flavor for numbers.

17 THE WITNESS: It's a relatively small
18 number of people actually expressing it, but more of
19 our colleagues have a sense that the dialogue that they
20 are engaging in with the foreign interlocutory is not
21 as full as it once was before.

1 Several cases, people have just said we
2 cannot -- we're not going to share with you like we
3 used to. Other cases of individuals just feeling that
4 they're not getting the kind of exchanges that they had
5 before the Wikileaks.

6 THE COURT: Now, these disclosures took
7 place in -- I believe in the Department of State
8 cables, we were talking about November of 2010 followed
9 by the second traunch, as you described it, in
10 September of 2011.

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: These feelings that you're
13 talking about, were they expressed to you in 2011,
14 2012, 2013?

15 THE WITNESS: They started in 2010 and I
16 believe that my colleagues abroad or still feeling the
17 chill. But I cannot go to the depth of -- it's
18 impossible to know what someone is not sharing with you
19 and that is, in itself, I believe, a risk to national
20 security.

21 THE COURT: I know you did testify about

1 this, I just want to make sure I'm clear on that. You
2 testified earlier, I believe, in response to Defense
3 counsel's question that there was a draft damage
4 assessment done in a draft form approximately around
5 August 2010 before the next wave of releases?

6 THE WITNESS: Your Honor, it was
7 August 2011. It reached me. I was reviewing it,
8 talking to people and then the Labor Day second large
9 traunch of purported documents were released.

10 So, at that point, it was clear to me that
11 the earlier snapshot which showed, you know, bad
12 results from the Wikileaks. It was not -- it had been
13 done after a year. It was not appropriate to restart
14 it again because we would need time for the second to
15 play out.

16 THE COURT: If you can't answer this in an
17 open setting, please don't.

18 With the original draft, was there -- did
19 that encompass an assessment of everything that the
20 Department of State thought might be released or what
21 was released?

1 THE WITNESS: Was released.

2 THE COURT: Any followup based on that?

3 MR. FEIN: No, ma'am.

4 MR. COOMBS:

5 EXAMINATION BY MR. COOMBS:

6 Q The legacy distribution system, if you
7 could, explain that in general format.

8 A Certainly. A telegram would arrive at the
9 State Department's communication center in Washington.
10 It would be read by an artificial intelligence looking
11 at the caption, looking at the tags. Tags are a
12 four-digit or two-digit country indicator. Every
13 country in the word has two letters and there are a
14 series of tags which are arranged from A tags which are
15 administrative to P tags which are political reporting
16 to E tags and then the following three letters mean the
17 type of economic political cultural counselor activity.

18 So this automated intelligence reads all of
19 this and decides that this information is a value to
20 the national security staff, the Department of Defense
21 or to whomever depending on the subject and on the

1 basis of this then pushes that message over classified
2 circuits to a designated communications center at
3 whatever agency involved and then that agency, on
4 receipt of it, makes distribution within its entity to
5 whomever it deems appropriate with the security
6 clearances.

7 Q When you had testified during the same time
8 250,000 SIPDIS cables were put in the Net Centric
9 database, you had \$2.4 million cables unrelated to
10 that, going through these legacy distribution system?

11 A Correct.

12 Q And those were going to the other
13 65 interagency partners?

14 A Well, not everyone to every 65, but the one
15 that the AMats, A-M-A-T-S, the distribution system
16 picked up and decided should be routed there on the
17 basis of reading the cable, looking for keywords and
18 terms, the tags, and the captions, if there were any.

19 Q And that number, 2.4 million, that was for
20 2005 to 2010?

21 A Yeah, it was for a comparable period and

1 there's, obviously, a lot of administrative processing
2 cables in that period as well.

3 Q Now, with regards to the small number of
4 people that had expressed a chilling effect and then
5 the colleague saying I think there's a greater number
6 of people at least per our impressions, did the State
7 Department ever quantify that or graph that in any way
8 to show --

9 A No. There's a belief also there have
10 been -- we had to make personnel changes at some
11 embassy and I don't want to go into any greater depth.
12 That's another example of a chilling effect.

13 Q With regards to the chilling effect that
14 you believe is present, did that wane at all from 2011
15 to 2012?

16 A I believe that's -- I believe that's hard
17 to tell. I don't believe we have the full measure yet.
18 I cannot answer that question. I wish I could, but I
19 cannot.

20 Q So from your perspective, at least from
21 what you can see and what you understand, you can

1 discern any difference between what might have been the
2 chilling effect in 2011 to 2012 to 2013?

3 A It's the same chilling effect. If you're
4 trying to -- I can't...

5 Q The level of it.

6 A No, I cannot.

7 MR. COOMBS: No further questions.

8 THE COURT: Thank you.

9 MR. FEIN: May we have a moment, Your
10 Honor?

11 THE COURT: Yes.

12 EXAMINATION BY MR. FEIN:

13 Q Sir, in reference to your testimony just
14 now and specifically about the 2.4 million cables,
15 through the legacy system, what did you mean by alleged
16 contained admin type cables?

17 A There was some percentage of those
18 cables -- and, Major, I don't have the exact number --
19 that would never have been candidates for SIPDIS since
20 I was interpreting that as a question about potentially
21 comparing the relative sizes, cables reporting on

1 freight movements, travel orders, assignment
2 notifications, temporary duty, flight arrivals, those
3 would have been in there.

4 So a 2.4 to 250,000 is not a direct 10 to 1
5 comparison because what would have been put in SIPDIS
6 is not -- we would not have loaded those kind of
7 administrative financial -- here is American embassy's
8 Zanadu's financial allotment for the next quarter.
9 Those would not have been put into SIPDIS.

10 Q Sir, as far as the classification breakdown
11 of 251,000 purported cables, those cables are never
12 reviewed for their actual classification, correct?

13 A We never reviewed all 250,000, no.

14 Q So those numbers, sir, that you gave during
15 cross-examination, the breakdown of 50 percent were
16 unclassified, 50 percent were classified, what do you
17 mean by that?

18 A When you said reviewed for classification,
19 I was using the same phraseology as Defense counsel had
20 been using. We were able to aggregate and disaggregate
21 them and how many were classified and how many were

1 unclassified. We did not consult -- conduct a review
2 of about the half which were classified in the same way
3 that the filing did.

4 MR. FEIN: Thank you, sir.

5 THE COURT: Anything else?

6 MR. COOMBS: Nothing, Your Honor.

7 THE COURT: I just have one last one based
8 on that. Can you give me a flavor of -- you said
9 2.4 and it's not a direct correlation with the 250,000
10 that were on SIPDIS because you have these
11 administrative.

12 Do those administrative, I guess, cables
13 that are only of interest to a few people that wouldn't
14 go out to the interagency, out of 2.4 million, would
15 that be 50 percent, 25 percent, 75 percent? I don't
16 need an exact figure.

17 THE WITNESS: Your Honor, I would be only
18 guessing. I'm very, very hesitant to do that just
19 because that's not a way that I've ever cut them in my
20 mind or had it presented to me.

21 THE COURT: Any followup based on that?

1 MR. COOMBS: No, Your Honor.

2 MR. COOMBS: No, ma'am.

3 THE COURT: May this witness be excused?

4 MR. FEIN: Yes, ma'am permanent excusal.

5 THE COURT: Under Secretary Kennedy, you
6 are permanently excused. You are free to go or you can
7 stay in the courtroom.

8 (Witness left court room).

9 THE COURT: We talked earlier today about
10 proceeding with the unreasonable multiplication of
11 charges motion potentially this afternoon.

12 How would the parties -- would you like to
13 concur or decide how you might like to proceed?

14 MR. FEIN: Yes, ma'am. We conferred during
15 the last recess. The United States requests that we
16 reconvene at 14:30 which will give us enough time for
17 lunch and then hopefully to agree on this proffer with
18 expected testimony and write it.

19 THE COURT: All right. And then we'll have
20 oral argument with respect to that motion?

21 MR. FEIN: Yes, ma'am.

1 MR. COOMBS: Yes, Your Honor.

2 THE COURT: Is there anything else we need
3 to address today? I assume we're not going to have any
4 other witness for the government?

5 MR. FEIN: No, ma'am.

6 THE COURT: Okay. Court is in recess until
7 14:30. Carry on.

8 (The trial was adjourned at 1:09 p.m.)

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